

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:10cr200  
 .  
 vs. . Alexandria, Virginia  
 . April 7, 2011  
 LEE BENTLEY FARKAS, . 2:05 p.m.  
 .  
 Defendant. .  
 .  
 . . . . .

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

VOLUME 4 - P.M.

APPEARANCES:

FOR THE GOVERNMENT:

CHARLES F. CONNOLLY, AUSA  
PAUL J. NATHANSON, AUSA  
United States Attorney's Office  
2100 Jamieson Avenue  
Alexandria, VA 22314  
and  
PATRICK F. STOKES, ESQ.  
ROBERT ZINK, ESQ.  
United States Department of Justice  
Criminal Division, Fraud Section  
1400 New York Avenue, N.W.  
Washington, D.C. 20005

FOR THE DEFENDANT:

WILLIAM B. CUMMINGS, ESQ.  
William B. Cummings, P.C.  
P.O. Box 1177  
Alexandria, VA 22313

(APPEARANCES CONT'D. ON FOLLOWING PAGE)

(Pages 887 - 1038)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANT:

BRUCE S. ROGOW, ESQ.  
Bruce S. Rogow, PA  
500 East Broward Boulevard  
Suite 1930  
Fort Lauderdale, FL 33394  
and  
CRAIG KUGLAR, ESQ.  
Law Office of Craig Kuglar, LLC  
1130 Piedmont Avenue, Suite 913  
Atlanta, GA 30309  
and  
ZAHRA S. KARINSHAK, ESQ.  
Krevolin & Horst  
1201 West Peachtree Street  
One Atlantic Center, Suite 3250  
Atlanta, GA 30309

10

11 ALSO PRESENT:

JENNIFER GINDIN  
LISA PORTER  
SA SCOTT TURNER  
JUDSON VAUGHN

12

13

14 OFFICIAL COURT REPORTERS:

ANNELIESE J. THOMSON, RDR, CRR  
NORMAN B. LINNELL, RMR, FCRR  
U.S. District Court, Fifth Floor  
401 Courthouse Square  
Alexandria, VA 22314  
(703)299-8595

15

16

17

18

19

20

21

22

23

24

25

1

I N D E X

2

DIRECTCROSSREDIRECTRECROSS

3

WITNESS ON BEHALF OF  
THE GOVERNMENT:

4

Cathie Kissick  
(Resumed)

891

909

5

6

7

EXHIBITS

8

RECEIVEDWITHDRAWN

9

GOVERNMENT'S:

10

No. 1-13

985

1-262

891

11

1-264

897

22-2A

918

12

22-32

903

22-33

903

13

14

DEFENDANT'S:

15

No. 1

914

918

2

926

16

3

932

5

935

17

185

980

18

186

980

187

980

19

188

980

202

988

20

203

957

21

204

991

205

1009

22

206

1021

207

969

23

209

1027

24

210

1019

211

1024

25

212

952

213

1003

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

EXHIBITS (Cont'd.)

	<u>RECEIVED</u>	<u>WITHDRAWN</u>
<u>DEFENDANT'S:</u>		
No. 215	1006	
251B	981	
251C	981	
251D	947	
551	910	
552	1017	
560	1012	
561	1016	

Kissick - Direct

891

1 A F T E R N O O N S E S S I O N

2 (Defendant and Jury present.)

3 CATHIE KISSICK, GOVERNMENT'S WITNESS, PREVIOUSLY AFFIRMED, RESUMED

4 DIRECT EXAMINATION (Cont'd.)

5 BY MR. STOKES:

6 Q. Ms. Kissick, I believe we left off talking about PINs, and  
7 would you please tell us what a PIN is?

8 A. It's a peer-to-peer communication between a BlackBerry and a  
9 BlackBerry. It doesn't go through the server.

10 Q. And did you communicate with the defendant and Teresa Kelly  
11 and Desiree Brown at times through PINs?

12 A. Yes.

13 Q. And why did you do so?

14 A. Because they didn't go through the bank server.

15 Q. What types of information did you communicate through PINs  
16 with those individuals?

17 A. Plan B.

18 Q. Would you also have other private or personal matter  
19 communications on your, on your BlackBerry through PINs?

20 A. Yes.

21 Q. Now, Ms. Kissick, can you take a look at Government's Exhibit  
22 1-262?

23 MS. KARINSHAK: No objection, Your Honor.

24 THE COURT: All right, it's in.

25 (Government's Exhibit No. 1-262 was received in

Kissick - Direct

892

1 evidence.)

2 BY MR. STOKES:

3 Q. When the, when the government agents met with you on July 31  
4 and then after that, did you provide the government agents some of  
5 your PINs?

6 A. I provided them all of my PINs.

7 Q. Well, had you over the years been PIN-ing with the  
8 defendants?

9 A. Yes. I provided them all the PINs that were in my  
10 BlackBerry.

11 Q. Okay. So you didn't have all of your PINs over the years  
12 preserved?

13 A. No.

14 Q. So whatever you had in your BlackBerry in other words you  
15 provided?

16 A. Yes.

17 Q. Okay. So if you'd look at 1-262, do you see, what is it --  
18 is this one of the PINs?

19 A. Yes.

20 Q. Okay. And so does it look like just a normal e-mail or a  
21 text message?

22 A. Yes.

23 Q. When you receive it on your BlackBerry?

24 A. Yes.

25 Q. Okay. And so this is from you to Lee Farkas on July 23,

Kissick - Direct

893

1 2009?

2 A. Yes.

3 Q. Was this prior to you meeting with the, the agents and  
4 talking to them?

5 A. Yes, it was.

6 Q. Okay. And so what do you say to him?

7 A. "Any way with some deposits that you could move some of the  
8 AOT in question to Platinum and we can be done with it?"

9 Q. And what does Lee Farkas respond to you?

10 A. "Yes."

11 Q. What are you talking about there?

12 A. We had to get down half a billion dollars in assets,  
13 Colonial, and if we let him move some of his deposits over, could  
14 he move some of the, I think it was the agency, agency loans that  
15 were mislabeled over there?

16 Q. So that's the AOT in question are the -- are these the fake  
17 agency trades with loans behind them?

18 A. Yes.

19 Q. Now, Ms. Kissick, on July -- do you recall on July 25 of 2009  
20 having a telephone conversation with the defendant or having some  
21 conversations with the defendant and Teresa Kelly about a, a disk  
22 of data?

23 A. Yes.

24 Q. And what, what was this disk of data? What did you  
25 understand the disk of data to be that you were talking about?

Kissick - Direct

894

1 A. Originally, I thought it was supposed to be the list of loans  
2 to show that everything fit and we could get AOT to be in proper  
3 order with private label trades.

4 Q. Now, Ms. Kissick, where was this list supposed to come from?

5 A. Taylor Bean.

6 Q. And how did you, how did you come into possession of it?

7 A. Well, I actually never possessed it, but Lee Farkas was going  
8 to drive it down to Orlando.

9 Q. Do you know if he did?

10 A. He did.

11 Q. And who did he provide it to?

12 A. Teresa Kelly.

13 Q. And so what did you say that you thought it was going to be?

14 A. We thought it was supposed to be -- we were getting ready for  
15 our FDIC exam, and we thought it was the list of loans that we had  
16 so we could put all the trades in proper order on AOT.

17 Q. Now, let me be clear about this: You thought that these were  
18 going to be loans --

19 A. As of July -- as of the time frame we were in right then.

20 Q. The list of loans that you were provided, did you think that  
21 those were loans that were already listed on AOT?

22 A. It was to fill the hole.

23 Q. Okay. So these are loans to fill the hole.

24 A. Yes.

25 Q. And why were you trying to fill that hole at that moment?



Kissick - Direct

895

1 A. Because we had FDIC coming in the following week.

2 Q. Now, did, did you talk to Ms. Kelly about that, that list of  
3 loans the defendant provided her?

4 A. Yes.

5 Q. And then did you talk to the defendant?

6 A. Yes.

7 Q. And what did you come to understand that list of loans  
8 actually was?

9 A. It was as of their March 31 fiscal year end.

10 Q. So in other words, was this data related to filling the hole  
11 for you at Colonial Bank?

12 A. No.

13 Q. And so why -- did you -- did the defendant explain to you why  
14 he was providing you data for March 31?

15 A. He had said just to kind of hold on to it.

16 Q. Do you know why he was giving you, though, this data -- or  
17 why he was giving Colonial Bank this data?

18 A. No.

19 Q. Do you know what purpose it was supposed to serve for Taylor  
20 Bean?

21 A. It was his fiscal year end information.

22 Q. Do you know if there was anything going on at Taylor Bean --

23 A. He was trying to get his audit done, but there was -- there  
24 were problems.

25 Q. Did you talk to him about his audit?

Kissick - Direct

896

1 A. Yes.

2 Q. Okay. And so did he explain to you what he -- what these  
3 auditors were doing at Taylor Bean with regard to AOT?

4 A. No. At first, he told me that there was a problem on COLB  
5 with wet loans, and then later on, he said there was an issue with  
6 REO on AOT, and they were just trying to reconcile their assets.

7 Q. Well, did you have Teresa take a look at those loans that he  
8 provided you?

9 A. Yes, we did.

10 Q. Okay. Did those loans match Colonial Bank's records for AOT  
11 from March 31?

12 A. No.

13 Q. Were those loans that were on this list representing loans as  
14 of March 31, were they actually eligible to be on AOT as of March  
15 31?

16 A. No, I don't -- no.

17 Q. Why not?

18 A. Because we showed them being shipped off to somebody else.

19 Q. Had they already been sold to another bank?

20 A. Bank of America.

21 Q. Now, Ms. Kissick, after you met with the FBI, did you then go  
22 to Ohio?

23 A. Yes.

24 Q. And did you return before the, before you left the bank  
25 permanently? Did you return to the bank after you went to Ohio?

Kissick - Direct

897

1 A. No.

2 Q. And, Ms. Kissick, while you were in Ohio, did you continue to  
3 have communications with people at the bank?

4 A. Yes.

5 Q. And with Mr. Farkas?

6 A. Yes.

7 Q. Ms. Brown?

8 A. No. I didn't talk to her again.

9 Q. Well, did you communicate by PIN or e-mail after that, do you  
10 recall?

11 A. To Desiree?

12 Q. Yes.

13 A. No. We couldn't find her.

14 Q. Okay. If you'd take a look at Government's Exhibit 1-264?

15 MS. KARINSHAK: No objection, Judge.

16 THE COURT: All right, it's in.

17 (Government's Exhibit No. 1-264 was received in  
18 evidence.)

19 BY MR. STOKES:

20 Q. Okay. Ms. Kissick, what is 1-264?

21 A. "Please have Mike get the info to Teresa" --

22 Q. Is that an e-mail?

23 A. It's an e-mail, yes.

24 Q. And is that from August 4, 2009?

25 A. Yes.

Kissick - Direct

898

1 Q. And is that an e-mail from you to Lee Farkas?

2 A. Yes.

3 Q. Now, had there been a search warrant at Colonial Bank prior  
4 to this?

5 A. Yes.

6 Q. On what date?

7 A. I think the day before.

8 Q. And how about at TBW, do you know? Were you aware of whether  
9 there was a search warrant? Had a search warrant been executed at  
10 TBW?

11 A. I think it was the day before as well.

12 Q. Okay. And so what do you tell Lee Farkas?

13 A. "Please have Mike get the info to Teresa ASAP. Thanks."

14 Q. What info are you trying to get the defendant to send to --  
15 I'm sorry, are you trying to get, have the defendant have provide  
16 Mike to Teresa?

17 A. Well, this was after I heard that they got terminated by HUD,  
18 and so I wanted to get the list of loans, because I knew they were  
19 going to go down after that.

20 Q. What list of loans?

21 A. The list of loans that he had promised me forever.

22 Q. List of loans for what facility?

23 A. The AOT.

24 Q. Okay. So are you trying to fill the hole still after the  
25 search warrant?

Kissick - Direct

899

1 A. At this point, I'm trying to get the loans, period.

2 Q. Are you trying to fill the hole at that point, Ms. Kissick?

3 A. Yes, I guess.

4 Q. Well, did you have a hole at that point?

5 A. Yes, on the facility.

6 Q. And did you try to get a set of loans to take care of that  
7 hole?

8 A. At this point when I saw HUD, I was trying -- I knew that  
9 they were going to be in big trouble, so I was just trying to get  
10 loans. Earlier, I had tried to get loans the day before, Monday,  
11 to fill the hole.

12 Q. Okay. Now we're on Tuesday. You're still trying to get a  
13 list of loans to fill -- are you trying to get a list of loans to  
14 fill that hole, Ms. Kissick? Were you going to take those loans  
15 and use them for something else?

16 A. It was for a different reason. It was because they were  
17 going to be -- they got terminated by HUD.

18 Q. Were those loans going to be used on another facility?

19 A. They were just going to be used to protect us.

20 Q. Were they going to be put on AOT?

21 A. I guess. I'm not sure.

22 Q. Well, the question is whether you were going to -- were you  
23 seeking these loans to put them on AOT?

24 A. That was, that was not my intent then at all, because I just  
25 heard they were going down. I wanted to just get the loans,

Kissick - Direct

900

1 period. The day before, I was trying to get loans, but once the,  
2 the, everything changed, then I was just trying to grab  
3 collateral.

4 Q. For whom?

5 A. For Colonial.

6 Q. And why were you trying to grab collateral for Colonial?

7 A. Because we would be in a loss position.

8 Q. Why would you be in a loss position?

9 A. Because we had a hole.

10 Q. Now, Ms. Kissick, had Mr. -- Special Agent Scott Turner  
11 talked to you prior to this date about trying to obtain any  
12 collateral for the bank?

13 A. He said, he said, "Don't do something that would be out of  
14 the ordinary, but run business as ordinary."

15 Q. Did he tell you not to change anything on AOT?

16 A. Yes.

17 Q. And, Ms. Kissick, in the course of your cooperation -- or  
18 after you met with the government, did the government -- on July  
19 31, did the government ask you to forward various PINs that you  
20 had had previously with Mr. Farkas?

21 A. Yes.

22 Q. And did you send some of those PINs to Mr. Turner?

23 A. I did, yes.

24 Q. And did you provide explanations for some of those PINs?

25 A. Some of them, yes.

Kissick - Direct

901

1 Q. And in those explanations you provided to the government,  
2 were you completely truthful about what the discussions were in  
3 those PINs?

4 A. No, I was not.

5 Q. Did you -- in those PINs that you forwarded to the  
6 government, did you tell Mr. -- Special Agent Turner that, that  
7 the only problem was that there were these fake agency trades with  
8 actual loans behind them?

9 A. Yes.

10 Q. These aged loans?

11 A. Yes.

12 Q. Did you describe it as an aged loan problem?

13 A. Yes.

14 Q. Did you tell Mr. Turner that there was Plan B pools on AOT at  
15 that time?

16 A. No.

17 Q. Why didn't you?

18 A. I was scared, very scared.

19 Q. Were you trying to minimize your role in the scheme at that  
20 point?

21 A. I guess, yes.

22 Q. Were you trying to protect yourself?

23 A. Yes.

24 Q. Now, Ms. Kissick, while you were out of town in Ohio and --  
25 but were still in communication with folks from the bank, did you

Kissick - Direct

902

1 receive any reports of any problems on the COLB facility at  
2 Colonial Bank?

3 A. I did, yes.

4 Q. And what did you learn, just in general?

5 A. I learned that there had been some double-pledging with the  
6 Ocala Funding facility.

7 Q. What was the Ocala Funding facility?

8 A. It was a financing vehicle that was owned by Taylor Bean and  
9 funded by two other banks.

10 Q. And who controlled Ocala Funding?

11 A. Taylor Bean.

12 Q. And what was the double-pledging problem you've learned of?

13 A. That loans that we had on our books were also on Ocala  
14 Funding's books.

15 Q. Approximately how much in value?

16 A. Over a billion.

17 Q. How much?

18 A. Over a billion.

19 Q. Is that a billion with a "B"?

20 A. With a "B," yes.

21 Q. And, Ms. Kissick, is there a problem with double-pledging?

22 A. Yes, there is.

23 Q. What's the problem with double-pledging?

24 A. Only one has value.

25 Q. Only one --



Kissick - Direct

903

1 A. Only one entity will actually have value.

2 Q. So in other words, can a loan be owned by both Colonial  
3 Banks -- Colonial Bank and Ocala Funding at the same time?

4 A. No.

5 Q. Now, Ms. Kissick, did you know prior to that of any problems  
6 on Ocala Funding?

7 A. No.

8 Q. Or on COLB related to Ocala Funding?

9 A. No.

10 Q. Did you try to reach out to the defendant to find out what  
11 was happening?

12 A. Yes. We tried to get a conference call with him with Sumeet  
13 Wadhera from Deutsche Bank and tried to do a conference call to  
14 figure out hopefully it was just a horrible clerical error or  
15 something.

16 Q. And if you'd take a look at Government's Exhibit 22-32 and  
17 22-33?

18 Do you have 22-32 in front --

19 THE COURT: Is there an objection to either of those?

20 MS. KARINSHAK: One moment, Judge.

21 No objection, Your Honor.

22 THE COURT: All right, they're both in.

23 (Government's Exhibit Nos. 22-32 and 22-33 were received  
24 in evidence.)

25 BY MR. STOKES:

Kissick - Direct

904

1 Q. Ms. Kissick, take a look at 22-32.

2 A. Um-hum.

3 Q. And is that -- do you see, is this another PIN?

4 A. Yes.

5 Q. And did you forward this to Special Agent Scott Turner?

6 A. I did.

7 Q. On August 5, 2009, at approximately 3:00 p.m., did you PIN  
8 Lee Farkas, Desiree Brown, and Donna Skuhrovec?

9 A. Yes.

10 Q. Okay. And so earlier I asked you just for clarification  
11 whether you'd had any communications with Desiree Brown after, I  
12 believe, August 3. Does this appear to be a communication with  
13 her after this point?

14 A. Well, I e-mailed -- we PIN'd her, but we never heard from  
15 her.

16 Q. I understand. So in other words, you reached out to her?

17 A. Yeah.

18 Q. Okay. So what does that, what does that PIN say?

19 A. "I need one of you to call me immediately regarding COLB and  
20 Ocala Funding. Now. My cell is 407-399-6162."

21 Q. Was this around the time that you learned of the  
22 double-pledging?

23 A. Yes.

24 Q. Why were you reaching out to them?

25 A. To find out what the heck was going on.

Kissick - Direct

905

1 Q. Would you take a look at 22-33? Is this another PIN?

2 A. Yes.

3 Q. Another PIN that you forwarded to Scott Turner?

4 A. Yes.

5 Q. And is this a PIN you sent to Desiree Brown on August 6, in  
6 the morning?

7 A. Yes.

8 Q. And what do you say in this PIN?

9 A. "I do not know what's going on, but you need to come in and  
10 help us all figure it out. There's a major disconnect between  
11 Ocala Funding and COLB. You have got to help solve the issue."

12 Q. At that point in time, did you know what the issue was?  
13 Other than that there was apparent double-pledging, did you know  
14 how it happened?

15 A. No.

16 Q. Did you ever get a call back from Desiree Brown?

17 A. No.

18 Q. Did you ever get a call back or a communication from the  
19 defendant about this double-pledging?

20 A. No. We tried to have a conference call with him, but we  
21 never -- it never happened.

22 Q. Did he ever respond to your PIN?

23 A. I don't remember.

24 Q. Now, Ms. Kissick, after this, did you hire an attorney?

25 A. Not until I got home.

Kissick - Direct

906

1 Q. Once you got back to Orlando after this time period sometime  
2 in early August, did you hire an attorney?

3 A. Yes.

4 Q. And at that time, did you agree to meet with the prosecutors?

5 A. Yes.

6 Q. And in your meetings with -- and agents?

7 A. Yes.

8 Q. And did you meet with the government numerous times over the  
9 next year and a half?

10 A. Yes.

11 Q. Reviewed documents?

12 A. Yes.

13 Q. Explained various transactions and the business relationship  
14 between Colonial Bank and TBW?

15 A. Yes.

16 Q. And did you discuss your role in this scheme?

17 A. Yes.

18 Q. And, Ms. Kissick, were you fully truthful at all times?

19 A. Not at all times, no.

20 Q. At the beginning, were you -- did you continue to minimize  
21 your role in the scheme?

22 A. Yes.

23 Q. And why were you doing that?

24 A. I was scared, and I was trying to protect myself.

25 Q. Ms. Kissick, did you ultimately plead guilty?

Kissick - Direct

907

1 A. Yes.

2 Q. When did you plead guilty?

3 A. In March.

4 Q. And when is your sentencing?

5 A. June 17.

6 Q. And how much time are you facing a potential sentence?

7 A. Up to 30 years.

8 Q. And, Ms. Kissick, what was your salary at Colonial Bank?

9 A. It ended up being 260,000 or 268.

10 Q. That was in the end?

11 A. Um-hum.

12 Q. And did you receive a bonus?

13 A. Sometimes.

14 Q. And how much in bonus would you receive?

15 A. 90,000, 100,000 sometimes, zero.

16 Q. It depended on the year?

17 A. Yeah.

18 Q. It depended on the business?

19 A. Um-hum.

20 Q. And did you -- and you were the head of the division  
21 receiving that amount of money?

22 A. Yes.

23 Q. Now, Ms. Kissick, did you receive any payments from  
24 Mr. Farkas for doing Plan B?

25 A. No.

Kissick - Direct

908

1 Q. Did he pay you any kickbacks?

2 A. No.

3 Q. Did he fly you any -- take you on any vacations?

4 A. No.

5 Q. Did he fly you on his jet?

6 A. I went on his jet with him on a couple trips, business trips.

7 Q. Did he ever let you use your jet -- his jet for personal  
8 purposes?

9 A. No.

10 Q. Did he give you any free mortgages?

11 A. No.

12 Q. Did you receive anything of particular value from him in  
13 connection with Plan B?

14 A. No.

15 MR. STOKES: The Court's indulgence?

16 THE COURT: Yes, sir.

17 MR. STOKES: No further questions at this time, Your  
18 Honor.

19 THE COURT: All right. Cross-examination?

20 MS. KARINSHAK: Your Honor, the podium was moved when I  
21 came back from lunch and I would ask that it be moved back so I  
22 can have access to my documents.

23 THE COURT: It can't be moved very much because of the  
24 wires.

25 Mr. Wood?

Kissick - Cross

909

1 Don't you do it.

2 THE COURT SECURITY OFFICER: Which way do you want it?

3 MS. KARINSHAK: Just right back where it was.

4 MR. STOKES: Your Honor, we may need to approach.

5 Mr. Wood has explained to us why he had moved the podium before.

6 THE COURT: It's been fixed now. There's no problem.

7 MR. STOKES: Okay.

8 MR. KARINSHAK: Actually, Your Honor, we didn't move it  
9 at all. I was going to put it up a little bit more. Maybe  
10 halfway.

11 THE COURT: The jurors have to be able to see the  
12 witness, all right?

13 MS. KARINSHAK: Okay.

14 THE COURT: You'll have to work it out.

15 CROSS-EXAMINATION

16 BY MS. KARINSHAK:

17 Q. Good afternoon, Ms. Kissick. How are you today?

18 A. Fine.

19 Q. And my name is Zahra Karinshak. I represent Mr. Farkas. And  
20 we haven't met before today, have we?

21 A. No.

22 Q. And I'm sorry, could you please speak up?

23 A. No.

24 Q. And we haven't talked on the phone?

25 A. No.

Kissick - Cross

910

1 Q. And I don't believe we've ever even seen each other, correct?

2 A. Correct.

3 Q. Now, Ms. Kissick, we're going to go through some documents,  
4 and I wanted to provide you a highlighter, because we're going to  
5 try to highlight it on the screen, but we might also need you to  
6 highlight some of those documents. I'd like to show you what's  
7 been marked as Defendant's Exhibit 551.

8 MR. STOKES: No objection, Your Honor.

9 THE COURT: All right, it's in.

10 (Defendant's Exhibit No. 551 was received in evidence.)

11 THE COURT: I assume you're moving it in?

12 MS. KARINSHAK: Yes, Your Honor, I am.

13 Q. Now, if you could please look at Defendant's Exhibit 551,  
14 Ms. Kissick, could you please tell us who is this message from?

15 A. Milton Vescovacci.

16 Q. And who is Mr. Vescovacci?

17 A. He's Colonial's counsel.

18 Q. So he's Colonial Bank's lawyer?

19 A. Yes.

20 Q. And did you deal with him quite frequently in your dealings  
21 there at Colonial Bank?

22 A. Yes, I did.

23 Q. And who is this message to?

24 A. To me, to Rodney Lewis, and to Tamara Stidham, who was  
25 in-house counsel for Colonial.



Kissick - Cross

911

1 Q. So Ms. Stidham, Ms. Stidham is in-house counsel?

2 A. Yes.

3 Q. And who is Mr. Lewis?

4 A. He was the account manager for Taylor Bean for us at  
5 Colonial.

6 Q. Okay. Is he above or below you in your order?

7 A. Below.

8 Q. Sorry?

9 A. Below me. He reported me.

10 Q. He reported to you?

11 A. Yes.

12 Q. Okay. Now, looking at this e-mail, the date is August 7,  
13 2009, correct?

14 A. Correct.

15 Q. And it's showing that -- and I'm looking at the  
16 e-mail, "Attached is a draft notice of default for the overline  
17 facility," and then it goes into what the collateral for the  
18 overline facility is, correct?

19 A. Yes.

20 Q. Could you please read what the collateral for the overline  
21 facility is?

22 A. "The collateral includes among other things, mortgage loans  
23 notes, REO property, accounts, servicing contracts, servicing  
24 receivables, takeout commitment, hedging instruments, TBW shares,  
25 a life insurance policy, and a second lien on the Natixis MSRs and

Kissick - Cross

912

1 a cross-second security on the servicing facility collateral, and  
2 proceeds of the foregoing."

3 Q. So this is all collateral for one facility, that being the  
4 overline facility, correct?

5 A. Yes.

6 Q. And this is an entire menu of the collateral from your lawyer  
7 to you with respect to this facility, correct?

8 A. Yes.

9 Q. And you had looked at the documents with respect to the  
10 overline facility, and you knew that you had all kinds of  
11 collateral with respect to that facility, correct?

12 A. Correct.

13 Q. And all the collateral you just read for the jury is valid  
14 collateral for that overline facility, correct?

15 A. I'm sorry, what?

16 Q. All of that collateral that you just read for the jury,  
17 that's all valid collateral for the overline facility, correct?

18 A. Yes.

19 Q. And you had mentioned mortgage loan notes as one of those  
20 things, but there are several others listed as well, such as REO  
21 property, accounts, servicing contracts, correct?

22 A. Yes.

23 Q. So if I were to evaluate my collateral just based on the  
24 mortgage notes, then I wouldn't be accurately assessing the  
25 collateral for the entire facility, would I?

Kissick - Cross

913

1 A. For the overline? No.

2 Q. So I wouldn't be doing it right if I just relied on the  
3 notes, correct?

4 A. Right.

5 Q. Now, you mentioned a life insurance policy. Whose life  
6 insurance policy is collateral for this facility?

7 A. Lee Farkas's.

8 Q. Mr. Farkas's?

9 A. Yes.

10 Q. And do you recall the value of that life insurance policy?

11 A. The portion we had was \$2 million.

12 Q. So a \$2 million life insurance policy?

13 A. Um-hum.

14 THE COURT: Please say "yes" or "no."

15 THE WITNESS: Yes. I'm sorry.

16 BY MS. KARINSHAK:

17 Q. So if Mr. Farkas were to die, your bank would get \$2 million?

18 A. Yes.

19 Q. And you mentioned a second lien on the Natixis MSRs, correct?

20 A. Right.

21 Q. And the MSR is the mortgage servicing right, I believe,  
22 correct?

23 A. Yes.

24 Q. And it's true and it's totally allowed that two entities can  
25 have interest in MSRs, correct?

Kissick - Cross

914

1 A. Right. We had a second lien behind Natixis.

2 Q. Right. But it's okay to do that. You can have someone with  
3 a first lien and someone with a second lien and maybe even someone  
4 with a third lien, correct?

5 A. Yes.

6 Q. All right. Now, isn't it true that to understand each of  
7 these facilities that we've all been talking about, you really  
8 need to understand the governing documents as to those facilities?

9 A. Yes.

10 Q. And weren't you involved in drafting, working on these  
11 documents that govern each of these facilities?

12 A. Yes.

13 Q. Okay. So let's take a look at a couple of those.

14 Could you please pass Defense Exhibit 1 to Ms. Kissick?

15 Do you have Defense Exhibit 1, Ms. Kissick?

16 A. Yes.

17 MR. STOKES: No objection, Your Honor.

18 THE COURT: All right, then it's in.

19 (Defendant's Exhibit No. 1 was received in evidence.)

20 BY MS. KARINSHAK:

21 Q. Okay. Now, Ms. Kissick this is the mortgage loan  
22 participation sale agreement for the AOT agency securities,  
23 correct?

24 A. Yes, it is.

25 Q. And I'm sorry, I cannot hear you.

Kissick - Cross

915

1 A. Yes, it is.

2 Q. And -- so this document, this big, thick document --

3 MR. STOKES: Your Honor, if I may, this document appears  
4 to be marked up. It doesn't appear to be clean copy.

5 THE COURT: All right, let me see.

6 MS. KARINSHAK: Let me double-check.

7 THE COURT: It certainly is marked up. Is there a clean  
8 copy?

9 MS. KARINSHAK: Your Honor, one of my folks just went to  
10 look.

11 THE COURT: All right. Well, temporarily we'll let this  
12 in, but I expect a clean copy to replace it.

13 MS. KARINSHAK: Yes, Your Honor. We will, we will get  
14 that.

15 Q. All right. Defense Exhibit 1 is the AOT program - agency  
16 securities document, correct?

17 A. Correct.

18 Q. And the purchaser listed here is Colonial Bank?

19 A. Yes.

20 Q. And Taylor, Bean & Whitaker Mortgage Corporation is listed as  
21 the seller?

22 A. Yes.

23 Q. And it's dated April 30, 2007, correct?

24 A. Correct.

25 Q. And that would be the effective date of this version of the

Kissick - Cross

916

1 document?

2 A. Yes.

3 Q. And isn't it true you would have prior versions? This would  
4 be one of the versions that you would have been using as of April  
5 30, 2007, correct?

6 A. Yes.

7 Q. Okay. And flipping to the third page of that document, the  
8 Recitals, and going down to the third recital, it says  
9 here, "Whereas, seller acknowledges that it will use its  
10 commercially reasonable efforts to cause each mortgage pool  
11 purchased hereunder as evidenced by a participation certificate to  
12 be converted into an agency security relating to such mortgage  
13 pool, such agency security to be backed by and to relate to the  
14 mortgage loans. In furtherance thereof, seller agrees to use its  
15 commercially reasonable efforts to cause the related agency  
16 security to be issued and delivered on or before the settlement  
17 date under the terms and conditions provided herein."

18 Correct?

19 A. Yes.

20 Q. And so that means that Taylor, Bean & Whitaker is supposed to  
21 use commercially reasonable efforts to meet requirements of this  
22 agreement, correct?

23 A. Correct.

24 Q. And use commercially reasonable efforts to -- with respect to  
25 the mortgage pools, correct?

Kissick - Cross

917

1 A. Correct.

2 Q. Now, moving to the next page, page No. 2, I'd like to focus  
3 on the definition of "collateral," and it says that the definition  
4 of collateral is actually found in section 7(d) of this agreement,  
5 correct?

6 A. Yes.

7 Q. And so let's move to section 7(d) for the definition of  
8 "collateral." That's on page 16.

9 THE COURT: 7(d) as in David.

10 MS. KARINSHAK: Yes, ma'am, 7(d) as in David.

11 THE WITNESS: What page was that on?

12 BY MS. KARINSHAK:

13 Q. On page 16.

14 A. Okay.

15 Q. Down at the bottom, section (d). And this is the definition  
16 of "collateral," correct, with respect to this -- with respect to  
17 this facility?

18 MR. STOKES: Judge, this is -- they've got a marked-up  
19 document of this.

20 MR. KUGLAR: Their Government's Exhibit 22-2A is the  
21 same document.

22 MS. KARINSHAK: If you could please substitute that out,  
23 please? It's Government's Exhibit 22-2A. It's the same document.

24 THE COURT: 22-2A.

25 MS. KARINSHAK: Yes, ma'am.

Kissick - Cross

918

1 THE COURT: All right, that's the one that's going to go  
2 into evidence instead of this one.

3 MS. KARINSHAK: Yes, Your Honor. If we could replace  
4 that for Defendant's Exhibit No. 1, that would be great.

5 (Government's Exhibit No. 22-2A was received in  
6 evidence; Defendant's Exhibit No. 1 was withdrawn.)

7 THE COURT: I'm just going to mark out Defense 1. The  
8 record will show it going in as Government 22-2A.

9 THE WITNESS: We don't have that one.

10 THE COURT SECURITY OFFICER: The document only says 22.  
11 No 2A.

12 THE WITNESS: It's not the same one.

13 MS. KARINSHAK: 22-2A. If not, we have one right here.

14 This is 22-2A.

15 Q. Okay. So looking at 22-2A, we're looking at the definition  
16 of "collateral," which is section 7(d) on page 16. Ms. Kissick,  
17 do you have that?

18 A. 7(b)?

19 Q. 7(d) as in dog.

20 A. Yes, here it is.

21 Q. Now, could you please read for us the definition of  
22 "collateral"?

23 A. "In order to secure the prompt payment in full of each  
24 repurchase price as and when due hereunder, and the prompt payment  
25 and performance by the seller of each of its other obligations



Kissick - Cross

919

1 under this agreement, the seller hereby pledges, assigns and  
2 delivers to purchaser, and grants to purchaser a security interest  
3 in, all of the seller's right, title and interest in (i) each  
4 mortgage loan, including, without limitation, the indebtedness,  
5 promissory note or notes, collateral security, the end investor  
6 commitment and all other documents and instruments evidencing,  
7 securing or otherwise related to each such mortgage loan, together  
8 with all of the rights, privileges and remedies applicable  
9 thereto, its right to service such mortgage loans hereunder  
10 (including, without limitation, pursuant to Section 8), (iii) all  
11 proceeds thereof, and (iv) all payment streams received in  
12 connection with any of the foregoing (collectively, the  
13 collateral)."

14 Q. So basically, the four little subparts, (i), (ii) and (iii)  
15 and (iv), list the collateral with respect to this facility,  
16 correct.

17 A. Correct.

18 Q. And so again, if I'm just looking at the mortgage loans with  
19 respect to the AOT program agency securities, then I'm not looking  
20 at all the collateral, correct? If I just focus on the mortgage  
21 loan, which is (i), and I don't include (ii), (iii) and (iv), then  
22 I'm not including everything in the collateral, correct?

23 A. Well, it's a part of the mortgage loan, because the mortgage  
24 loan has the servicing rights attached to it.

25 Q. So if I just take the loan itself, just the mortgage loan

Kissick - Cross

920

1 part, am I including everything, like the value, the number on the  
2 loan? Like, if I have a \$100,000 loan, if I just include my  
3 \$100,000 loan and I don't take into account servicing rights and  
4 the other things listed here in this document, then I haven't  
5 considered everything as part of my collateral, have I?

6 A. Correct.

7 Q. Okay. And if we could move to page 5, there's another  
8 definition I'd like you to read for the jury, and that's the  
9 definition of a "qualified substitute mortgage."

10 A. "Qualified substitute mortgage loan: Shall mean a mortgage  
11 loan (i) that, when aggregated with other qualified substitute  
12 mortgage loans being substituted on such transfer date, has an  
13 outstanding principal loan balance, after application of all  
14 payments of principal due and received during or prior to the  
15 month of substitution, equal to the outstanding principal loan  
16 balance of the mortgage loan being substituted on the related  
17 transfer date and (ii) that complies, as of the related transfer  
18 date, with each of the representations and warranties made by  
19 seller concerning the mortgage loan contained in this agreement."

20 Q. And so that's the definition of a qualified substitute  
21 mortgage loan with respect to this document, correct?

22 A. Correct.

23 Q. And that definition mentioned some seller promises, so  
24 looking at page 20 of this document, subsection (b) talks about  
25 what the seller is hereby representing and warranting, correct?

Kissick - Cross

921

1 A. Yes.

2 Q. And flipping over to 21, (viii), which is an 8, what is one  
3 of the promises that the seller is making to you, and that being  
4 Taylor, Bean & Whitaker, under this document?

5 A. The part starting "As to both the mortgage pool"?

6 Q. No, the part starting "None of the mortgage loans."

7 A. What page?

8 Q. You're on page 21. It's about, oh, a little lower than --

9 A. Oh, okay, (viii). "None of the mortgage loans are  
10 counterfeit, fraudulent, forged, fictitious, or nonexistent or  
11 have been pledged or assigned to any third party."

12 Q. Okay. So that's one of the promises that the seller is  
13 making, correct?

14 A. Correct.

15 Q. That they're not going to have counterfeit, fraudulent,  
16 forged, fictitious, or nonexistent nor any that have been pledged  
17 or assigned to any third party, which would be third-party loans,  
18 correct?

19 A. Correct.

20 Q. All right. Now, moving to the next page, page 22, it appears  
21 that there's something that happens if the seller uses these  
22 counterfeit, fraudulent, forged, fictitious, or nonexistent  
23 documents -- mortgage loans, correct, looking at (d) on page 22?

24 A. Do you want me to read it?

25 Q. Yes, please.

Kissick - Cross

922

1 A. Okay.

2 Q. Just the, let's see, the first sentence.

3 A. "In the event any of seller's representations or warranties  
4 set forth in Sections 9(a), (b) and (c) are breached or determined  
5 by either party not to be accurate (each a breach), if such breach  
6 can be cured by action of seller, seller may attempt to cure such  
7 breach, including, but not limited to, by replacing the mortgage  
8 loans which are subject to and adversely affected by such breach  
9 (the deficient mortgage loans) with one or more qualified  
10 substitute mortgage loans to the extent permitted under the  
11 applicable agency guide."

12 Q. So in common English then, if there's a loan that's messed up  
13 for the reasons we just read, then this document clearly allows  
14 for qualified substitute mortgage loans, correct?

15 A. Correct.

16 Q. And you already gave us the definition for that, right?

17 A. Yes.

18 Q. So this document contemplated that there might be problems  
19 with loans and what to do with those, correct?

20 A. Correct.

21 Q. And this document would have been written, I assume, with  
22 counsel based on the wording that we've been going through,  
23 correct?

24 A. Correct.

25 Q. And you were involved in helping draft this document,

Kissick - Cross

923

1 correct?

2 A. I reviewed it, yes.

3 Q. With Mr. -- which lawyer would have helped with this  
4 document, if you recall?

5 A. Milton Vescovacci. Milton Vescovacci.

6 Q. And what law firm was he with again?

7 A. He was with Akerman Senterfitt.

8 Q. So where is that law firm located?

9 A. He was in Miami.

10 Q. Miami.

11 A. Um-hum.

12 Q. And does he have folks working with him as well that are  
13 helping with these documents?

14 A. Yes.

15 Q. And so is there a -- would it be fair to say there's a team  
16 of lawyers putting together this document for you?

17 A. I don't know.

18 Q. You only interacted with Mr. Vescovacci?

19 A. Yes.

20 Q. Okay. But at least Mr. Vescovacci is helping you with  
21 drafting these documents and helping you to understand these  
22 documents, correct?

23 A. Yes.

24 Q. Now, let's look at the bottom of page 22, and starting that  
25 last sentence, "It is understood," could you read that, please?

Kissick - Cross

924

1 A. "It is understood and agreed that the obligations of seller  
2 set forth in this section 9 to cure (by replacement or otherwise)  
3 or repurchase a deficient mortgage loan or an early payment  
4 default loan and to indemnify purchaser as provided in this  
5 section 9 constitute the sole remedies of purchaser respecting a  
6 breach of the representations and warranties made by seller  
7 hereunder."

8 Q. So basically, this is saying that -- the part you read about  
9 curing the breach is supposed to be the sole remedy of the  
10 purchaser, which would be Colonial Bank, regarding a breach of any  
11 of these representations or promises that the seller, that being  
12 Taylor, Bean & Whitaker, would have made, correct?

13 A. Right.

14 Q. And then let's move to page 27, please, section 19(a). Have  
15 you got that section?

16 A. Yes.

17 Q. Okay. Could you please read, it says, "Seller hereby  
18 acknowledges that," and I just want you to read (a). I don't want  
19 you to go into the others.

20 A. "Seller has been advised by counsel in the negotiation,  
21 execution and delivery of this agreement, the custodial agreement,  
22 the clearing agreement and every document to be executed by seller  
23 pursuant to this agreement."

24 Q. And so this is basically saying that Taylor, Bean & Whitaker,  
25 the seller, has been advised by counsel in the negotiation,

Kissick - Cross

925

1 execution, and delivery of this agreement, the custodial  
2 agreement, the clearing agreement, and every document to be  
3 executed by the seller pursuant to this agreement, correct?

4 A. Yes.

5 Q. Well, basically, the lawyers have advised the seller as well  
6 as you, the purchaser, for this AOT program agency securities  
7 agreement?

8 A. Our attorney did not advise Taylor, Bean & Whitaker.

9 Q. Well, it's in here that the seller acknowledges that,  
10 correct?

11 A. Advised by his own counsel, not our counsel.

12 Q. Okay. But your counsel would have been in these meetings,  
13 correct?

14 A. With their counsel as well.

15 Q. Yes. Wouldn't they have all been together talking about  
16 these documents?

17 A. If we had an attorney and they had an attorney, they would  
18 both have attorneys there.

19 Q. Okay. And you just said Taylor, Bean & Whitaker had an  
20 attorney, correct?

21 A. Yes.

22 Q. And who was that?

23 A. I don't remember.

24 Q. Would it be Jeff Cavender?

25 A. Oh, yeah, possibly.

Kissick - Cross

926

1 Q. Do you remember Jeff Cavender?

2 A. Yes.

3 Q. Okay. So we've got Taylor, Bean & Whitaker, Jeff Cavender,  
4 and we've got Mr. Vescovacci from your law firm?

5 A. Yes.

6 Q. And we've got an acknowledgement here by the seller that he's  
7 been advised by counsel -- or actually, the TBW has been advised  
8 by counsel in the negotiation, execution, and delivery of this  
9 document, correct?

10 A. Correct.

11 Q. Now I'd like to move to Defense Exhibit 2. And do you have  
12 that, ma'am?

13 A. Yes.

14 Q. And what is -- I'm sorry.

15 MR. STOKES: No objection, Your Honor.

16 THE COURT: All right, that's in.

17 (Defendant's Exhibit No. 2 was received in evidence.)

18 BY MS. KARINSHAK:

19 Q. What is Defense Exhibit 2?

20 A. It's the AOT program for home loan trades.

21 Q. And is it also for whole loan trades and private issue  
22 securities?

23 A. Yes.

24 Q. Okay. And so we have a separate agreement here. This is a  
25 different AOT program, correct? This is a different facility?



Kissick - Cross

927

1 A. Correct.

2 Q. And it's for whole loan trades and private issue securities,  
3 correct?

4 A. Yes.

5 Q. And again the same purchaser, Colonial Bank?

6 A. Yes.

7 Q. And again the same seller, Taylor, Bean & Whitaker?

8 A. Yes.

9 Q. Again the same date, April 30, 2007, correct?

10 A. Yes.

11 Q. All right. And again looking to the recitals, which is the  
12 first full page after the table of contents, did you find that?

13 A. Yes.

14 Q. Okay. Again, that recital in the third paragraph, is that  
15 the same recital that was in the first document that you've  
16 already read to the jury?

17 A. Yes, it is.

18 Q. Okay. So we won't read that again, but it's the same,  
19 correct?

20 A. Yes.

21 Q. Okay. Then moving to page 5, we have the same definition of  
22 "qualified substitute mortgage loan," correct?

23 A. Yes.

24 Q. And that's the same one you already read to the jury,  
25 correct?

Kissick - Cross

928

1 A. Yes, it is.

2 Q. All right, let's move over to page 18.

3 Have you found that?

4 A. Yes.

5 Q. Page 18, (d), towards the middle of the page?

6 A. Do you want me to read it?

7 Q. Yes. Yes, please.

8 A. "In order to secure the prompt payment in full of each  
9 repurchase price as and when due hereunder, and the prompt payment  
10 and performance by the seller of each of its other obligations  
11 under this agreement, the seller hereby pledges, assigns and  
12 delivers to purchaser, and grants to purchaser a security interest  
13 in, all of the seller's right, title and interest in each mortgage  
14 loan, including, without limitation, the indebtedness, promissory  
15 note or notes, collateral security, the end investor commitment  
16 and all other documents and instruments evidencing, securing or  
17 otherwise related to each such mortgage loan, together with all of  
18 the rights, privileges and remedies applicable thereto, its right  
19 to service such mortgage loans hereunder (including, without  
20 limitation, pursuant to section 8), all proceeds thereof, and all  
21 payment streams received in connection with any of the foregoing."

22 Q. So again, this is collectively the collateral, correct?

23 A. Yes.

24 Q. So again, section (d) on page 18 tells you the collateral  
25 with respect to the second facility, that being AOT whole loan

Kissick - Cross

929

1 trades and private issue securities, correct?

2 A. Correct.

3 Q. And again, the collateral here has more than just the  
4 mortgage loan itself, correct?

5 A. Correct.

6 Q. It's got the right to service the loan?

7 A. Yes.

8 Q. The proceeds thereof?

9 A. Yes.

10 Q. And all payment streams received in connection with any of  
11 the foregoing?

12 A. Yes.

13 Q. And what kind of payment stream would, would be associated  
14 with a mortgage loan?

15 A. The servicing rights.

16 Q. So that's the servicing rights, okay.

17 And also, I think you had mentioned that you had  
18 additional collateral. We mentioned Mr. Farkas's life insurance  
19 policy of \$2 million. Did you also have collateral that was his  
20 TBW stock?

21 A. Yes.

22 Q. And was that with respect to both of these agreements?

23 A. No. It was only on the overline.

24 Q. That was only on the overline.

25 And how much stock did you have? What was the value of

Kissick - Cross

930

1 Mr. Farkas's stock in TBW?

2 A. I don't know. It was 79 percent, I think, of the company,  
3 but I don't know.

4 Q. Okay. So 79 percent of the shares of Taylor, Bean &  
5 Whitaker. Whatever value Taylor, Bean & Whitaker had, you had 79  
6 percent of that as collateral, correct?

7 A. Correct.

8 Q. Now, again we move to page 23, and I think we have the same  
9 promise about, looking up there, the same promise about none of  
10 the mortgage loans or counterfeit, fraudulent, forged, fictitious,  
11 or nonexistent or have been pledged or assigned to any third  
12 party, correct?

13 A. Right.

14 Q. And then moving to the bottom again, we have that same  
15 subsection (d) talking about if there's a breach, correct?

16 A. Yes.

17 Q. And again, if there's a breach, there is a specific  
18 allocation to have qualified substitute mortgages loan --  
19 qualified substitute mortgage loans to be used, correct?

20 A. Correct.

21 Q. And again, this document contemplated what would happen if  
22 there were problematic mortgage loans, correct?

23 A. Correct.

24 Q. And this document was also drafted by lawyers, correct?

25 A. Yes.

Kissick - Cross

931

1 Q. And you were involved in that, correct?

2 A. Correct.

3 Q. And I believe you mentioned Mr. Vescovacci, was he involved  
4 in this document as well?

5 A. Yes.

6 Q. And what about Mr. Cavender on behalf of Taylor, Bean &  
7 Whitaker?

8 A. I'm sure he reviewed it.

9 Q. Okay. And then were there any other lawyers involved when  
10 you were drafting these documents?

11 A. I don't think so.

12 Q. Okay. And if you could please speak up?

13 A. I don't think so. Sorry.

14 Q. Now, again looking at the same page, there's language in,  
15 let's see, the first -- the second paragraph, it's a smaller  
16 paragraph, we've got the -- we're still on page 24. "In addition  
17 to such repurchase obligations"?

18 A. Do you want me to read that?

19 Q. I'm just talking about the last sentence of that paragraph.

20 A. "It is understood and agreed that the obligations of seller  
21 set forth in this section 9 to cure (by replacement or otherwise)  
22 or repurchase a deficient mortgage loan or an early payment  
23 default loan and to identify purchaser as provided in this section  
24 9 constitute the sole remedies of purchaser respecting a breach of  
25 the representations and warranties made by seller hereunder."

Kissick - Cross

932

1 Q. Okay. So this document also has the same language about the  
2 sole remedies under this document -- under this facility and its  
3 controlling documents, correct?

4 A. Yes.

5 Q. So the AOT program with respect to whole loan trades and  
6 private issue securities, that governing document, essentially  
7 operates the same as the, the agreement with respect to the AOT  
8 program agency securities, correct?

9 A. Correct.

10 Q. And again on page 29, there's the same acknowledgement by  
11 seller with respect to being advised by counsel, correct?

12 A. Correct.

13 Q. Okay. I'd now like to move to Defense Exhibit No. 3.

14 THE COURT: Any objection?

15 MR. STOKES: Your Honor, let me point out this isn't a  
16 signed agreement, so if I could just talk with counsel for a  
17 moment to find out what this is?

18 THE COURT: Go ahead. Go ahead.

19 (Discussion between counsel off the record.)

20 MR. STOKES: No objection, Your Honor.

21 THE COURT: All right, so it's in.

22 (Defendant's Exhibit No. 3 was received in evidence.)

23 BY MS. KARINSHAK:

24 Q. Okay. Ms. Kissick, what document is Defense Exhibit No. 3?

25 A. The second amendment to the fourth amended and restated

Kissick - Cross

933

1 security agreement.

2 Q. And the date of this agreement is January 29, 2009, correct?

3 A. Correct.

4 Q. And it's between Taylor, Bean & Whitaker, which is called the  
5 debtor -- correct?

6 A. Correct.

7 Q. And it's with Colonial Bank, the secured party, correct?

8 A. Yes.

9 Q. And these are documents for the overline facility, correct?

10 A. I'm assuming so, yes.

11 Q. Well, I don't want you to assume, ma'am. Can you --

12 A. Well, I've just seen it for the first time in a long time  
13 so --

14 Q. Okay. Can you please just look at that?

15 A. It is.

16 Q. I'm sorry?

17 A. It is, I believe, the -- it is the overline facility.

18 Q. And just the title of this, the Second Amendment to the  
19 Fourth Amended and Restated Security Agreement, that's the name,  
20 right?

21 A. Yes.

22 Q. And that sounds like this agreement goes through lots of  
23 amendments and lots of restatements and more amendments, correct?

24 A. Yes.

25 Q. And I assume that that means lawyers are involved every time

Kissick - Cross

934

1 you change this document, correct?

2 A. Yes.

3 Q. And you've got to re-sign another one?

4 A. Yes.

5 Q. And then re-sign another one?

6 A. Yes.

7 Q. Okay. And when this one being the second amendment to the  
8 fourth amended, there's probably been lots of versions, correct?

9 A. Yes.

10 Q. And lawyers would have been involved in all of those  
11 versions, correct?

12 A. Yes.

13 Q. And would you have been involved in putting together these  
14 documents?

15 A. Initially I was, but not after the first year or two.

16 Q. Okay. You weren't involved after the first year or two?

17 A. Well, I was not the account manager.

18 Q. Okay. You weren't the account manager. What were you?

19 A. The department head. So I didn't read it until later.

20 Q. But at some point as the head honcho --

21 A. I just made sure that what was approved got in here.

22 Q. I'm sorry?

23 A. I made sure that what was approved was put in the document.

24 Q. Okay. So you're double-checking that the lawyers did what  
25 you wanted them to do, correct?



Kissick - Cross

935

1 A. Correct.

2 Q. And even though some of these document are not signed, these  
3 appear to be the documents that you were operating under given the  
4 dates that are put forth in these documents?

5 A. Yes.

6 Q. And you would have kept these documents in your files there  
7 at Colonial Bank, right?

8 A. Yes.

9 Q. Because you'd want to know what the operating agreement says  
10 for all of these different facilities, correct?

11 A. Yes.

12 Q. And, in fact, given that you worked with all of these  
13 facilities so much as a banker, you would want to have these there  
14 so you can get in there and figure out what is allowed with  
15 respect to each facility, correct?

16 A. Correct.

17 Q. All right, let's move to Defense Exhibit No. 5.

18 MR. STOKES: No objection, Your Honor.

19 THE COURT: All right, it's in.

20 (Defendant's Exhibit No. 5 was received in evidence.)

21 BY MS. KARINSHAK:

22 Q. And again, we're just going to highlight some sections of  
23 this document, Ms. Kissick. Do you have that in front of you?

24 A. Yes.

25 Q. So what document is Defense Exhibit No. 5?

Kissick - Cross

936

1 A. Amended and restated loan participation sale agreement, but  
2 it's between Taylor Bean and Seaside National Bank, with Colonial  
3 just acting as collateral agent.

4 Q. Okay. But you're on there, correct?

5 A. Right.

6 Q. You're in this document?

7 A. Correct.

8 Q. Okay. So you're a party to this document then, correct?

9 A. Correct.

10 Q. Okay. And this is the COLB wet and dry mortgage loans  
11 program?

12 A. Yes.

13 Q. And this is amended and restated loan participation sale  
14 agreement, correct?

15 A. Yes.

16 Q. So it's been amended and restated at least one time; would  
17 that be a fair assumption?

18 A. Yes.

19 Q. Okay. And again, this document would be revised as many  
20 times as necessary given the evolving relationships in this  
21 contract?

22 A. Actually, no. These do not -- because it was two sale  
23 concerns, they didn't get revised very often unless there was an  
24 accounting issue.

25 Q. Okay. So this document doesn't get -- excuse me, Defense

Kissick - Cross

937

1 Exhibit 5 doesn't get revised as much as the other defense  
2 Exhibits 1, 2, and 3 that we've already gone through?

3 A. No. AOT and COLB do not get revised often at all unless  
4 there's an accounting issue, but the overline and any other loan  
5 facility could get revised.

6 Q. The overline and any other loan facility could get revised?

7 A. Right.

8 Q. And what is any other loan facility?

9 A. The warehouse line that we had.

10 Q. Anything else?

11 A. Working capital line.

12 Q. Anything else?

13 A. I don't think so.

14 Q. And are those all facilities that you have with respect to  
15 this relationship with Taylor, Bean & Whitaker?

16 A. Yes.

17 Q. I'm sorry?

18 A. Yes.

19 Q. So those all are, are part of the working facilities that  
20 you -- and agreements you have with Taylor, Bean & Whitaker?

21 A. Yes.

22 Q. And what is the date on Defense Exhibit No. 5?

23 A. December 10, 2008.

24 Q. And again, is this a document that would have been drafted by  
25 lawyers, and would you have consulted with those lawyers in

Kissick - Cross

938

1 drafting this document?

2 A. Well, this was actually for another bank to provide the funds  
3 for them.

4 Q. Um-hum.

5 A. So we just acted on our role as agent. The other bank had to  
6 be the one talking to the law firm.

7 Q. So as agent, you don't get any lawyers involved in this  
8 document?

9 A. It was just handling the administration of the collateral,  
10 and because of the sale, because of the true sale conditions,  
11 there's, there's no deviation, so we did what we did.

12 Q. But don't you have a lawyer look at it?

13 A. Well, he -- our lawyer drafted it.

14 Q. That's what I was trying to get to.

15 A. Okay.

16 Q. Thank you. So your lawyer drafted it?

17 A. Yes.

18 Q. And who's your lawyer drafting this document?

19 A. Milton Vescovacci.

20 Q. Okay. And would you have been involved at all -- when  
21 Mr. Vescovacci is drafting this document, would you have been  
22 involved at all in talking to him about what requirements need to  
23 be met in this document?

24 A. Well, he's the one that drafted the document. I mean, he  
25 followed the true sale guidelines so --

Kissick - Cross

939

1 Q. Did you discuss the true sale guidelines with him?

2 A. He would know actually better than me.

3 Q. But did you talk to him at all?

4 A. I'm sure I did.

5 Q. Okay. Because again, as the head of the division, you want  
6 to make sure these documents are correct, right?

7 A. Yes.

8 Q. Okay. And you want to make sure to guard the facilities and  
9 guard the interests of Colonial Bank at all times, correct?

10 A. Correct.

11 Q. Because that's part of your duties as the director of the  
12 division?

13 A. Correct.

14 MS. KARINSHAK: Okay. Could you hand up Defendant's  
15 Exhibit 251, please, sir? And I'm sorry, if you could hand up  
16 251A, B, C, and D. So we've got 251 and then 251A, B, C, and D.

17 THE COURT: Any objections?

18 MR. STOKES: Judge, I promise I won't take long to  
19 review this much, but I just don't even know what this is.

20 No objection, Your Honor.

21 THE COURT: All right, they're all in.

22 BY MS. KARINSHAK:

23 Q. Now, I've shown you Defense Exhibit 251 for the purpose of  
24 having the entire document, but what we're really going to focus  
25 on, Ms. Kissick, is a smaller part of this big document.

Kissick - Cross

940

1 A. Okay.

2 Q. Okay. I want you to specifically look at 251D, which is the  
3 procedure manual.

4 THE COURT: Just so there's some context for this,  
5 Ms. Kissick, what is 251?

6 THE WITNESS: It looks like a summary of my whole  
7 department.

8 THE COURT: Have you ever seen it before?

9 THE WITNESS: No. I mean, at work I did, but not --

10 THE COURT: But the document itself, have you seen the  
11 document before?

12 THE WITNESS: No.

13 THE COURT: Look at the, look at the second or third  
14 page of 251. The bottom of the corner has a Bates stamp number  
15 ending in 245. Have you ever seen that document?

16 THE WITNESS: I'm sorry, look at which one?

17 THE COURT: Why don't you look at what appears to be the  
18 title.

19 THE WITNESS: "Colonial Bank Mortgage Warehouse Lending  
20 Division Table of Contents."

21 THE COURT: No, next page.

22 THE WITNESS: "State of Alabama Audit."

23 THE COURT: Have you seen that before?

24 THE WITNESS: No. I think it was put together by  
25 Montgomery.

Kissick - Cross

941

1 MR. STOKES: Your Honor, this was described to us as a  
2 policy manual by defense counsel. This does appear to be  
3 something completely different. It is an audit of the bank. We  
4 do object to the admission of this, unless this witness, it's  
5 relevant to this.

6 THE COURT: I don't see how 251 is relevant if this  
7 witness has never seen it.

8 MS. KARINSHAK: Your Honor, I was just trying to give  
9 the context from which the document came from. I don't need all  
10 of the 251, so if you'd like to take that out, that would be fine.  
11 I wanted to have the policy manual that was within this audit.

12 THE COURT: I understand, all right. 251 is out.

13 All right, so we're looking at 251D, as in David?

14 MS. KARINSHAK: Yes, ma'am. I'd like 251D, B, and A,  
15 which are all part of this procedures manual.

16 THE COURT: Which one are you starting with? Which  
17 subsection are you starting with?

18 MS. KARINSHAK: Your Honor, I'm starting with the  
19 procedures manual at 251D, which was at tab 13.

20 Q. Do you have that, Ms. Kissick?

21 A. Yes.

22 Q. Now --

23 MR. STOKES: Again, Your Honor, we're going to -- until  
24 a foundation is laid, we do object. We just don't know if the  
25 witness has ever seen this or what this is.

Kissick - Cross

942

1           THE COURT: All right. There has to be a foundation  
2 laid.

3           Ms. Kissick, do you recognize this document?

4           THE WITNESS: Yes. I haven't seen them in several  
5 years, but yes, I have seen them.

6           THE COURT: All right. When you say "them," what are  
7 you looking at right now?

8           THE WITNESS: There's a couple things. There's new  
9 business guidelines, and then there's a generic manual that we had  
10 that we would prepare for each client, but it would be modified  
11 depending on the client.

12 BY MS. KARINSHAK:

13 Q. Looking back at the table of contents to 251, doesn't it say  
14 at tab 13 that this is the mortgage warehouse lending procedures  
15 manual, and this, 251D starts at tab 13?

16           THE WITNESS: I gave away 251.

17           251 was prepared by folks in Montgomery for an exam, and  
18 I don't really know what they sent in it, because I never saw it.  
19 So they got this from my staff, and this is, like, our generic  
20 manual.

21 Q. I understand. But you have a procedure manual for your  
22 division, correct?

23 A. Correct.

24 Q. And that's what I'm trying to get to.

25 A. Okay.



Kissick - Cross

943

1 Q. You have a procedure manual for running your division,  
2 correct?

3 A. Well, we have a lot. This is the one that we gave our  
4 clients.

5 Q. I understand.

6 THE COURT: Wait, wait. I want this to be clear.  
7 You're looking at just D right now?

8 THE WITNESS: Yes.

9 THE COURT: All right. And you're saying that D is what  
10 you give to clients?

11 THE WITNESS: Yes.

12 THE COURT: And the entire D. There are a whole bunch  
13 of documents.

14 THE WITNESS: No, we do not give them -- the  
15 underwriting guidelines were our underwriting guidelines, and that  
16 did not go to clients. The part that says "Prepared For Colonial  
17 Bank Clients" is just the generic, and then we would customize it  
18 and bind it and, you know, send it to clients.

19 THE COURT: What concerns me is I don't know what we're  
20 talking about, because my D, what I'm looking at has a whole bunch  
21 of different things in it, and from Mr. Stokes' body language, I  
22 think his is the same.

23 MR. STOKES: We have no idea what this is.

24 THE COURT: All right. Let's look at Bates numbers.  
25 There are tiny little numbers.

Kissick - Cross

944

1           In a case with a lot of documents, ladies and gentlemen,  
2 in order for the lawyers to keep track of many pages, they have a  
3 stamping system, now I think it's done by computer. It's called  
4 Bates, B-a-t-e-s, and then there are a whole bunch of numbers, and  
5 in the bottom right-hand corner, there's a whole bunch of little  
6 numbers, and what I'm looking at right now, looking at Exhibit D,  
7 is it starts, I'm going to go with the last four numbers of the  
8 Bates stamp, 8430.

9           Is that what you have, Mr. Stokes, so we're looking at  
10 the same thing?

11           MR. STOKES: Yes, Your Honor, we do have that --

12           THE COURT: And that's what you've got.

13           MR. STOKES: -- as the second page of the document, the  
14 first substantive page.

15           MS. KARINSHAK: Yes, Your Honor. Your Honor, I want to  
16 double-check it with my other copy. Mine does not have Bates, but  
17 I have one right here.

18           THE COURT: Well, the first page has a 13 on it.

19           MS. KARINSHAK: Yes, ma'am. That's why I cited back to  
20 the table of contents for 13.

21           THE COURT: All right. Then it goes, I mean, the format  
22 appears to be pretty much the same up through -37, 8437, and then  
23 starting on 8438, there's something that says "Prepared for  
24 Colonial Bank Clients, July 25, 2008."

25           Now, is that what you're saying, that those papers are

Kissick - Cross

945

1 the ones that are given to clients?

2 THE WITNESS: This was given to clients.

3 These were not given to clients, the guidelines.

4 THE COURT: Don't do "this" and "that." The guidelines  
5 are, okay, are the first set of numbers I talked about.

6 THE WITNESS: Correct.

7 THE COURT: All right. And then is all the rest of that  
8 exhibit -- just so we're clear as to what we're talking about  
9 here, is all the rest of that exhibit given to clients? The  
10 client package appears to begin at 8438.

11 THE WITNESS: No the part ending -- starting with 8460  
12 is not. Let me see what else.

13 THE COURT: And 8460 has the title "Underwriting  
14 Process." So you're saying that would not go to a client.

15 THE WITNESS: Correct. I think this middle section did,  
16 though, starting with 8438 --

17 THE COURT: All right.

18 THE WITNESS: -- and ending with 8459.

19 THE COURT: There appear to be three different groupings  
20 within this exhibit. Now, which of the three groupings are you  
21 focusing this testimony --

22 MS. KARINSHAK: Your Honor, I'm trying to focus on the  
23 fact that this was within the bigger procedural manual that was  
24 used by the Mortgage Warehouse Lending Division, but there are  
25 parts of this -- it's basically a procedural manual by which this

Kissick - Cross

946

1 division has been run, and some of these documents may have been  
2 given to clients of that division. It's just part of that bigger  
3 document.

4 THE COURT: Is the bigger document you're talking about  
5 what you're calling tab 13?

6 MS. KARINSHAK: Yes, ma'am.

7 THE COURT: All right. Ms. Kissick, then as I think I  
8 understand, the question is is it your understanding that this  
9 entire package, with the underwriting business and the information  
10 for clients, was that plus these guidelines usually kept together  
11 as one --

12 THE WITNESS: Absolutely not. These were never given to  
13 clients, the guidelines.

14 THE COURT: But for employees, for example, if you were  
15 training a new person in your division, would this packet be given  
16 to them?

17 THE WITNESS: No. The guidelines were for underwriting,  
18 and the, and the procedural manual was mostly for operations.

19 THE COURT: All right. The proper exhibit, in my view,  
20 ought to be then just the procedures.

21 MS. KARINSHAK: Your Honor, that's fine.

22 THE COURT: Is that all right? All right, so we're  
23 going to remove from this exhibit -- I assume then the government  
24 has no objection?

25 MR. STOKES: We don't, Your Honor, no.

Kissick - Cross

947

1 THE COURT: All right. So this exhibit would stop at  
2 8437, all right? So 8430 to 8437, those seven sheets, that's the  
3 guidelines you're talking about.

4 MS. KARINSHAK: We're taking those out, right, Your  
5 Honor?

6 THE COURT: Well, that's going to be your Exhibit 251D,  
7 and the rest of it is not proper to be part of that exhibit.

8 (Defendant's Exhibit No. 251D was received in evidence.)

9 THE COURT: All right, then ask your questions about  
10 that.

11 MS. KARINSHAK: All right. Your Honor --

12 THE COURT: After all that, are there questions about  
13 the exhibit?

14 MS. KARINSHAK: Yes, Your Honor.

15 THE COURT: All right.

16 MS. KARINSHAK: I'm understanding that you are not  
17 including 8438 to 8459?

18 THE COURT: Not at this point.

19 MS. KARINSHAK: Okay.

20 THE COURT: If you lay a foundation, that's different,  
21 but, I mean --

22 BY MS. KARINSHAK:

23 Q. All right, I'd like to show you 8438, the Bates labels again,  
24 to 8459?

25 A. Okay. I have them.

Kissick - Cross

948

1 Q. Do you recognize that document?

2 A. Yes.

3 Q. And I believe you said this was something you gave to, it  
4 even says "Prepared for Colonial Bank Clients," correct?

5 A. Correct.

6 Q. And it's dated July 25, 2008?

7 A. Correct.

8 Q. And do you recognize this document?

9 A. Yes. This was the, the generic version of our procedures  
10 manual.

11 Q. Generic version of what?

12 A. Procedures manual.

13 Q. Okay. So you have a procedures manual as a Mortgage  
14 Warehouse Lending Division, and you also have a section that you  
15 hand out to clients, this section here.

16 A. Yes, yes.

17 Q. Okay. Now, looking to page 8439, we have the general  
18 operating overview, correct?

19 A. Yes.

20 Q. And could you please read the last bullet on that page for  
21 the jury?

22 A. "This procedures manual provides a general description of the  
23 operating procedures for a mortgage warehouse lending customer of  
24 Colonial Bank. This procedures manual is subject to change at any  
25 time, at the sole and absolute discretion of Colonial Bank,

Kissick - Cross

949

1 without prior notice to the mortgage company. Colonial Bank will,  
2 promptly after making any such change(s) to this procedural  
3 manual, provide to the mortgage company a copy of any such  
4 change(s). Furthermore, Colonial Bank reserves the right to waive  
5 or modify any of the requirements set forth herein, on a  
6 case-by-case basis."

7 Q. And so I want to focus on that last sentence: "Furthermore,  
8 Colonial Bank reserves the right to waive or modify any of the  
9 requirements set forth herein, on a case-by-case basis." That  
10 sentence, who is the person who can waive or modify the  
11 requirements?

12 A. The operations managers or myself.

13 Q. Okay. And who were the operations managers?

14 A. Joyce Shultz and -- well, actually, Joyce Shultz and Michelle  
15 Carroll.

16 Q. Okay. And so could Ms. Kelly waive these, these  
17 requirements?

18 A. No.

19 Q. So you or Joyce Shultz or -- the other lady's name was?

20 A. Michelle Carroll.

21 Q. Okay. So you-all are the three that can waive or modify  
22 requirement that are set forth in this document, and you do it on  
23 a case-by-case basis, correct?

24 A. Yes.

25 Q. And you give this out to clients so clients know what to

Kissick - Cross

950

1 expect when they're dealing with your division, correct?

2 A. Correct.

3 Q. And that would apply to your day-to-day work operations with  
4 companies like Taylor, Bean & Whitaker, correct?

5 A. Correct.

6 Q. And again, if you wanted to make some exceptions to the rules  
7 you've put in here, you can do it on a case-by-case basis, because  
8 you're the head of the division?

9 A. Correct.

10 MS. KARINSHAK: And is this in evidence, Your Honor?

11 THE COURT: Not the way it's been done, no. Is this all  
12 you're using from tab 13?

13 MS. KARINSHAK: This is from tab 13, yes, ma'am.

14 THE COURT: This is all that you are using from tab 13?

15 MS. KARINSHAK: Yes, ma'am.

16 THE COURT: All right. This then is 251D, all right?

17 Not the rest of it. Let's not burden the jury with any more  
18 documents --

19 MS. KARINSHAK: Yes, ma'am. I'd like to get it focused  
20 to the key documents.

21 MR. STOKES: Exhibit 251D?

22 THE COURT: Just -- yeah. And the underwriting process  
23 is not part of this exhibit at this point.

24 MS. KARINSHAK: Your Honor, my understanding is it's  
25 8438 through 8459. That's what I have connected as 251D.



Kissick - Cross

951

1 THE COURT: That is -- D as in David?

2 MS. KARINSHAK: D as in David, yes, ma'am.

3 THE COURT: That's it.

4 MS. KARINSHAK: Thank you, Judge.

5 THE COURT: Now, you had also mentioned A, B, and C.

6 Are you still pushing -- putting those forward or not?

7 MS. KARINSHAK: I'm going to come back to those.

8 THE COURT: All right. They're not in at this point  
9 then.

10 BY MS. KARINSHAK:

11 Q. Now, we just talked about the procedure manual that went out  
12 to customers and talked about that you could do, you could do  
13 exceptions on a case-by-case basis, and in this case in your  
14 relationship with Taylor, Bean & Whitaker, you did waive or modify  
15 requirements during the course of your relationship, correct?

16 A. Correct.

17 Q. And in fact, you could go -- you had the ability to go around  
18 these documents by getting approval not only from yourself, but  
19 you could take it to your higher ups, correct?

20 A. Correct.

21 Q. So would it be fair to say that if someone didn't review that  
22 policy manual with respect to how you dealt with customers, they  
23 may not understand what you as the head of the division had  
24 authority to do?

25 A. Please repeat that. I don't understand what you're asking

Kissick - Cross

952

1 me.

2 Q. What I'm trying to say is that if someone didn't read that  
3 manual and understand how you established your relationship to  
4 your clients, they may not understand your authorities or how your  
5 relationships worked with your customers, correct?

6 A. Well, this was actually given to operational people for  
7 operational to send in loans and our wire cutoff times and  
8 everything else. So, I mean, those were the things we waived,  
9 like a wire cutoff time.

10 Q. Okay. But if I didn't read that document, as a person coming  
11 in who doesn't know anything about your division, if I don't read  
12 that document and go through this, I wouldn't necessarily  
13 understand what your authorities were or how your company worked  
14 with respect to those relationships, correct?

15 A. Correct.

16 Q. All right. Now, let's look at this, Defendant's Exhibit 212,  
17 please.

18 MR. STOKES: No objection, Your Honor.

19 THE COURT: All right.

20 (Defendant's Exhibit No. 212 was received in evidence.)

21 BY MS. KARINSHAK:

22 Q. Now, Ms. Kissick, do you recognize this document? It's an  
23 e-mail --

24 A. It's an e-mail. I don't recognize it, but, I mean, it's our  
25 e-mails.

Kissick - Cross

953

1 Q. It is your e-mails?

2 A. Um-hum.

3 Q. And your name is actually on the e-mail that's in the middle  
4 of the page there. Do you see the one dated April 25, 2006, at  
5 11:05 a.m.?

6 A. Yes.

7 Q. And what is the subject?

8 A. "Send me the COLB plus request on the big loan" --

9 THE COURT: Whoa, whoa, whoa. Slow down, please.

10 THE WITNESS: "Send me the COLB plus request on the big  
11 loan, and I will do that one today."

12 BY MS. KARINSHAK:

13 Q. I'm sorry, ma'am, I was asking about the subject of the  
14 e-mail.

15 A. Oh. "Aged warehouse loans."

16 Q. Okay. So "WH" stands for warehouse?

17 A. Correct.

18 Q. You just read for us, "Send me the COLB plus request on the  
19 big loan, and I will do that one today," correct?

20 A. Correct.

21 Q. And move up the next e-mail in that chain. Would you please  
22 tell us who that's from and to?

23 A. From Desiree to Teresa.

24 Q. And just for the record, could you use their whole names?

25 A. From Desiree Brown to Teresa Carrier.

Kissick - Cross

954

1 Q. And the date?

2 A. April 25.

3 Q. And the subject again?

4 A. "Re: Aged warehouse loans."

5 Q. And this response was what?

6 A. I thought over 120 days weren't eligible for COLB plus."

7 Q. I'm sorry, ma'am, now, you're a little bit too close. It's  
8 kind of --

9 A. Sorry. "I thought over 120 days weren't eligible for COLB  
10 plus."

11 Q. Okay. And just to make sure we have the record straight, the  
12 e-mail that was sent to you was from -- I'm sorry, the e-mail you  
13 read previously was from Teresa Carrier to Desiree Brown, copy  
14 you, April 25, 2006, where we said, "Send me the COLB plus request  
15 on the big loan, and I will do that one today," and then Ms. Brown  
16 writes back, "I thought over 120 days weren't eligible for COLB  
17 plus?"

18 And then what is the response above that?

19 A. "We can do it upon approval."

20 Q. And it was from whom?

21 A. Teresa to Desiree.

22 Q. And, I'm sorry, use their full names.

23 A. Teresa Carrier to Desiree Brown.

24 Q. Now, is this e-mail referring to the fact that you can change  
25 some of the rules with respect to these facilities with approval?

Kissick - Cross

955

1 A. This would have to be done above me.

2 Q. Okay. But you can get it done even with approval above you?

3 A. Yes.

4 Q. Sorry?

5 A. Yes.

6 Q. And who would be the approving authority on this request for  
7 the COLB plus?

8 A. Well, I don't know. I think it might have been Kamal at that  
9 time.

10 Q. Kamal who?

11 A. I think Kamal was my boss then.

12 Q. I'm sorry?

13 A. Kamal Hosein.

14 Q. Kamal Hosein? And who is he?

15 A. He was the treasurer.

16 Q. And he was your boss?

17 A. Yes.

18 Q. And was he your boss the whole time you were at the Mortgage  
19 Warehouse Lending Division?

20 A. No.

21 Q. Who was your first boss?

22 A. Art Barksdale.

23 Q. Okay. And how long were you working with Art Barksdale?  
24 From what date to what date?

25 A. I don't remember when it ended. August of '98 until I don't

Kissick - Cross

956

1 remember when I switched.

2 Q. How long do you think you worked with Mr. Hosein?

3 A. A couple years, three maybe.

4 Q. A couple years from the date of the shutdown or --

5 A. I don't know. Maybe three years.

6 Q. Three years before August 2009?

7 A. I don't really -- I don't know. I'd have to go back and, and  
8 look. I don't know.

9 Q. Okay. But you think you worked with him for about three  
10 years?

11 A. Yes, I guess. I don't, I don't remember to be honest with  
12 you. I really don't.

13 Q. But at some point, he was your direct supervisor, correct?

14 MR. STOKES: Your Honor, I think --

15 THE WITNESS: Yes.

16 MR. STOKES: -- she's answered this question five times  
17 now.

18 THE COURT: This has been established. Let's move on.

19 BY MS. KARINSHAK:

20 Q. Now, let's go to the next document, which is Defendant's  
21 Exhibit 203.

22 THE COURT: Is there an objection, Mr. Stokes?

23 MR. STOKES: There's not, Your Honor.

24 THE COURT: There is not.

25 MR. STOKES: Yes.

Kissick - Cross

957

1 THE COURT: All right, it's in.

2 (Defendant's Exhibit No. 203 was received in evidence.)

3 BY MS. KARINSHAK:

4 Q. Now, looking at Defendant's Exhibit 203, again, this is an  
5 e-mail chain, and I wanted to focus on looking kind of above the  
6 middle of the page, Ms. Kissick. Who is this e-mail from?

7 A. From Milton Vescovacci to me.

8 Q. Okay. And what is the date?

9 A. August 5.

10 Q. Of what -- of what year?

11 A. '09.

12 Q. 2009?

13 A. Yes.

14 Q. All right. And what is the subject?

15 A. "Worst case."

16 Q. And could you please read the contents of the e-mail for the  
17 jury, please?

18 A. "Please confirm if the list below of all facilities that  
19 Colonial Bank has with TBW is correct. The facilities that I am  
20 aware of are as follows: Wet and dry COLB with Colonial;  
21 construction COLB with Colonial; overline facility with  
22 Colonial" --

23 Q. I mean, could you read the numbers and go a little bit  
24 slower?

25 A. Okay. "No. 1, wet and dry COLB with Colonial; No. 2,

Kissick - Cross

958

1 construction COLB with Colonial; No. 3, overline facility with  
2 Colonial; No. 4, AOT (agency securities) facility with Colonial;  
3 No. 5, AOT (private securities and whole loans) facility with  
4 Colonial; co-purchaser -- No. 6, co-purchaser COLB with Seaside  
5 and Colonial; No. 7, co-purchaser AOT with USAmeribank and  
6 Colonial; and No. 8, co-purchaser AOT with Cole Taylor Bank and  
7 Colonial."

8 Q. Okay. So those are eight different facilities that are  
9 listed in this e-mail?

10 A. Correct.

11 Q. And Mr. Vescovacci again is your lawyer, correct?

12 A. Correct.

13 Q. And this is the attorney you had talked about who's been  
14 consulting with you related to agreements for each of these  
15 facilities, correct?

16 A. Correct.

17 Q. So we have eight different facilities in the relationship  
18 between Colonial Bank and Taylor, Bean & Whitaker, correct?

19 A. Correct.

20 Q. And each of these would have their own agreements and  
21 operating rules, correct?

22 A. Well, actually the COLB are all exactly the same, and the AOT  
23 are the same. The only one that's different is the overline  
24 because of the true sale.

25 Q. Okay. But those separate groups have operating agreements,



Kissick - Cross

959

1 correct?

2 A. They all have different operating agreements, but they all  
3 are the same language.

4 Q. Well, the same language, we reviewed the governing agreements  
5 here earlier, correct?

6 A. Correct.

7 Q. And not all of them were the same, but there were two that  
8 were the same, right, the AOT --

9 A. Well, the AOTs are all the same, and the COLBs are the same.

10 Q. Exactly. So the AOTs are the same, the COLBs are the same,  
11 and then you have the overline, correct?

12 A. Correct.

13 Q. Okay. So there's three big sets of rules, correct?

14 A. Correct.

15 Q. And to understand the facilities and how those facilities  
16 worked, you would have to understand those governing documents,  
17 correct?

18 A. Yes.

19 MS. KARINSHAK: Okay. And, Your Honor, I'd like to do a  
20 demonstrative at this time.

21 THE COURT: Have you shown it to the government?

22 MS. KARINSHAK: Yes, Your Honor.

23 THE COURT: Any objection, Mr. Stokes?

24 MR. STOKES: I don't know if I have a copy of this or  
25 not, Your Honor.

Kissick - Cross

960

1 MS. KARINSHAK: Here's another one.

2 MR. STOKES: No, no objection. I'm not sure what it is  
3 exactly, but --

4 THE COURT: All right.

5 MR. STOKES: Your Honor, if I may, we may object as we  
6 go on. This is a representation of something that actually  
7 doesn't exists, but we're not sure what it is, but we're happy to  
8 proceed and then --

9 THE COURT: It looks like it's a bunch of buckets.

10 MS. KARINSHAK: Yes, ma'am.

11 THE COURT: All right, go ahead.

12 BY MS. KARINSHAK:

13 Q. Now, Ms. Kissick, looking at these, these buckets represent  
14 the different agreements that are -- the different facilities that  
15 you have with Taylor, Bean & Whitaker, correct?

16 A. Correct.

17 Q. And the mortgage loans will proceed from one bucket to the  
18 other, mortgage notes would go from one bucket to another bucket,  
19 depending on how -- the rules of each bucket, correct, the aging  
20 of the loans and they can only be in certain buckets at certain  
21 times, correct?

22 A. Yes, correct.

23 Q. Okay. And so according to the rules of the different  
24 buckets, a mortgage loan may or may not be able to be in that  
25 bucket and may get moved to another bucket, correct?

Kissick - Cross

961

1 A. Yes.

2 Q. And so in your relationship with Taylor, Bean & Whitaker,  
3 with the volume of notes that are coming through, there's  
4 potentially a lot of moving of mortgage notes between all these  
5 buckets, correct?

6 MR. STOKES: Your Honor, I'm just going to object  
7 because they're showing graphics on this. One, we don't know what  
8 the graphics are, and witness hasn't even agreed that this is, in  
9 fact, what happened, and they're showing the mortgage loans moving  
10 between buckets and shuffling.

11 MS. KARINSHAK: Your Honor --

12 THE COURT: It's also a, creating an invisible record  
13 for any further purposes for this record. I don't think it's very  
14 helpful. This is a simplistic enough concept that can be done  
15 with words, so let's take this off the screen, and go ahead.

16 BY MS. KARINSHAK:

17 Q. Ms. Kissick, you talked about the loans would be moving  
18 between different buckets, different facilities based on the rules  
19 for those facilities, correct?

20 A. Yes.

21 Q. And each of those facilities has their own set of rules that  
22 you're following while these loans are moving between all those  
23 different facilities, correct?

24 A. Well, actually, they're only supposed to go -- they aren't  
25 supposed to move all around. They're supposed to go to COLB and

Kissick - Cross

962

1 get funded or go to AOT and get funded, and we ended up putting  
2 them on overline when they didn't meet the requirements of anybody  
3 else.

4 Q. I'm sorry, when they didn't --

5 A. When they aged out, sorry. Now I'm talking too loud.

6 Q. But you'd have to keep track of each of those as what can  
7 stay on COLB for too long before it goes to AOT before it goes to  
8 overline, correct?

9 A. We do keep track of it on our paperwork, yes.

10 THE COURT: Well, an individual mortgage, if I had a  
11 mortgage, individual one, that could be on the COLB, correct?

12 THE WITNESS: Correct.

13 THE COURT: All right. It wouldn't be on the AOT unless  
14 it were part of a pool?

15 THE WITNESS: Correct.

16 THE COURT: And you don't get the mortgage that's in a  
17 pool. You get the pool papers.

18 THE WITNESS: We get the papers, and the mortgages go  
19 down to Document Custody.

20 THE COURT: Right.

21 THE WITNESS: But just the paperwork moves.

22 BY MS. KARINSHAK:

23 Q. Now, would it be fair to -- let me establish your -- when did  
24 your relationship begin with Taylor, Bean & Whitaker? I believe  
25 you said 1998?

Kissick - Cross

963

1 A. Right. I started banking him at SunTrust in 1998.

2 Q. And then when did he come -- did he come over -- Taylor, Bean  
3 & Whitaker came over to Colonial in about September of 1999?

4 A. Yes.

5 Q. Would that be right?

6 And -- so from 1999 through August of 2009, would it be  
7 fair to say that Taylor, Bean & Whitaker had grown exponentially  
8 over that time?

9 A. Yes.

10 Q. And it had a very high volume?

11 A. Yes.

12 Q. And isn't it true that a lot of the tracking of those  
13 mortgage loans with respect to that volume is done electronically?

14 A. Yes.

15 Q. So that people aren't even touching the documents, the loans?  
16 They're coming in electronically and being sorted; is that right?

17 A. No, we always would touch the loans.

18 Q. Because that's the collateral that's in the safe, correct?

19 A. Well, that's the collateral that comes in first that perfects  
20 our interest, and then when the security is created, then it goes  
21 to the vault downstairs in custody.

22 Q. So that's actually touched, but other documents are not  
23 necessarily?

24 A. Correct.

25 Q. And some of those loans, the information gets sorted by

Kissick - Cross

964

1 specific data such as something's Fannie Mae eligible, and you can  
2 run a query to figure out which documents are Fannie Mae eligible,  
3 correct?

4 A. Correct.

5 Q. And so there's a lot of recordkeeping going on to keep track  
6 of the, what can be in each of the facilities and, indeed, what is  
7 in each of the facilities?

8 A. Right.

9 Q. Now, isn't it true that, that data integrity was an issue for  
10 Colonial Bank with respect to these tracking of loans and the data  
11 with respect to those loans?

12 A. On Colonial's part?

13 Q. Yes.

14 A. No.

15 Q. Okay. Well, what about on Taylor, Bean & Whitaker's part?

16 A. Definitely.

17 Q. Okay. When you say "definitely," what do you mean by that?

18 A. Their systems didn't seem to talk to one another.

19 Q. Their systems over at Taylor, Bean & Whitaker?

20 A. Yes.

21 Q. Didn't talk amongst themselves?

22 A. Yes.

23 Q. And Colonial Bank didn't ever have any data problems, you're  
24 saying --

25 A. On our, on our collateral monitoring system, no. We were --

Kissick - Cross

965

1 it was fine. And we actually were sometimes the point of record  
2 that Taylor Bean used.

3 Q. You mean point of record, they'd reach out to you and say,  
4 hey, we need to check our data versus yours?

5 A. Yes.

6 Q. And how often did that happen?

7 A. All the time.

8 Q. Okay. So would it be fair to say there was a big data  
9 integrity issue over at Taylor, Bean & Whitaker?

10 A. Yes. That was an ongoing issue.

11 Q. And did you also in the course of your relationship with  
12 Taylor, Bean & Whitaker and Mr. Farkas specifically make  
13 recommendations to him about the fact that they're growing so much  
14 that they needed more help?

15 A. Yes.

16 Q. And did you also say, "You know, you might need to add more  
17 depth to your bench"?

18 A. Yes.

19 Q. And what do you mean when you say, "I'd like you to add more  
20 depth to your bench"?

21 A. He couldn't be the only person working at the company.

22 Q. So you're saying he can't be the only one. What do you mean  
23 when you recommend to him to get depth to the bench?

24 A. To add more experienced people. He's growing quickly, and he  
25 couldn't be the only one there working.

Kissick - Cross

966

1 Q. And in response to your suggestion that there be more depth  
2 to the bench, wasn't a CFO brought on board, Mr. DeArmas?

3 A. I think he'd already been there. He was just hired after --  
4 he was just made CFO when Ray Crocker left.

5 Q. Ray Crocker left?

6 A. Yeah. I tried to get him to hire over people.

7 Q. Who did you try -- you tried to get who to hire over people?

8 A. I given him names like, I'm sorry, Frank Plenskofski. I  
9 can't even begin to spell it for you. Sorry.

10 Q. Who is Frank Plenskofski?

11 A. Everybody called him Franky P. He's very well known in the  
12 industry.

13 I was trying to get somebody -- he was growing fast. I  
14 was trying to get a CFO, you know.

15 Q. Okay. So you wanted a different CFO then?

16 A. Yes.

17 Q. You didn't like Mr. DeArmas?

18 A. No, it wasn't that. He was becoming a big company. He  
19 needed people with more strengths, more skill sets.

20 Q. So you didn't think Mr. DeArmas was strong enough to stay on  
21 the team; is that correct?

22 A. I could never really understand what he was telling me half  
23 the time, so I guess that would be a fair assessment.

24 Q. You couldn't understand what he was telling you?

25 A. Correct.



Kissick - Cross

967

1 Q. What does that mean?

2 A. I don't know what he was -- I didn't know what he was talking  
3 about when he was answering questions for us.

4 Q. So you would send a query to Mr. DeArmas, and he'd send  
5 something back that you just didn't understand?

6 A. It was -- yes, it was mumbo -- it was -- it didn't make  
7 sense. It was just like I was talking with a very learned person,  
8 and it didn't make any sense, but I didn't know what he was  
9 talking about half the time so --

10 Q. Mr. DeArmas, wasn't he a certified public accountant?

11 A. Yes. And I'm not, and that can be part of it. I don't know.  
12 But I did not know what he was talking about half the time, so --

13 Q. But he was the chief financial officer for Taylor, Bean &  
14 Whitaker?

15 A. Yes.

16 Q. And did you also make a recommendation that I believe  
17 Mr. Farkas followed, and that would be the CEO, Mr. Paul Allen?

18 A. Actually, he hired Paul because he had just been cut off by  
19 Fannie Mae, and Freddie Mac loved Paul Allen, and I remember him  
20 telling me, "Don't blow it with Paul," because they needed him to  
21 keep Freddie happy. So I didn't, I didn't even know who Paul  
22 Allen was. They introduced me to Paul Allen.

23 Q. Had you heard of Paul Allen?

24 A. No.

25 Q. Okay. But I misunderstood something you said here. You said

Kissick - Cross

968

1 "they told me." Who is "they"?

2 A. Lee.

3 Q. Okay. So Lee told you he's hiring Mr. Paul Allen because he  
4 wants to maintain a relationship with the --

5 A. No. He had been cut off by Fannie Mae. Freddie Mac loved  
6 Paul Allen, and they wanted -- Taylor Bean needed Paul Allen there  
7 to kind of grease the wheels with Freddie Mac, because that was  
8 their only lifeblood.

9 Q. And Mr. Paul Allen had a great relationship then with Freddie  
10 Mac, correct?

11 A. That's what I was told, yes.

12 Q. And so to keep good relationships up, Taylor, Bean &  
13 Whitaker, Mr. Farkas hired and brought on Mr. Paul Allen to be the  
14 CEO, correct?

15 A. Correct.

16 Q. And Mr. Paul Allen, do you know anything about his education  
17 as far as does he have a degree?

18 A. I'm assuming he does, yes. I don't know. I don't remember  
19 that much. He's very learned; I do know that.

20 Q. Does he have a degree from the London School of Economics?

21 A. I don't know.

22 Q. Now, Ms. Kissick, would you agree that in the business you're  
23 in of this, that it's a fast-moving business and mistakes can be  
24 made, and you can even have sloppy work?

25 A. Yes.

Kissick - Cross

969

1 Q. Even among your own employees?

2 A. Yes.

3 MS. KARINSHAK: Please show her Defense Exhibit 207.

4 MR. STOKES: No objection.

5 THE COURT: All right, it's in.

6 (Defendant's Exhibit No. 207 was received in evidence.)

7 BY MS. KARINSHAK:

8 Q. Ms. Kissick, does Defense Exhibit 207, does that show what  
9 appears to be some notes you -- or tell me what that is actually,  
10 Defense 207.

11 A. Well, I'm curious as to how you got this, because this was  
12 kind of my narrative that I made for a department talk that I was  
13 giving when we had a bunch of temporaries and they were not  
14 understanding the right, the privilege they had of having a nice  
15 job, and they were being a little spoiled, so I kind of gave them  
16 a talk.

17 Q. Well, if you notice, it's got a DOJ Bates label there, so it  
18 would have come from the DOJ, correct?

19 A. I guess so, yes.

20 Q. Sorry?

21 A. I guess so.

22 Q. Okay. Now, I want you to look at this memorandum of the talk  
23 you're giving to your employees about -- first you say on the  
24 first page, sub-point 1, what do you say?

25 A. I'm sorry, what was that?

Kissick - Cross

970

1 Q. On that first, you have a 1 with a parentheses. Could you  
2 please tell us -- actually, start at the very beginning. "I have  
3 called you all to this meeting." Please tell us what that is.  
4 Read that first sentence.

5 A. "I have called you all to this meeting because I need to go  
6 over a few things with you. I have struggled with what to say and  
7 how to say it for the past several days. I thought, I can give  
8 each of you a flow chart and an org. chart and go over what we do  
9 and how we do it so everyone will know exactly what their role is  
10 and how what you do or don't do affects the big picture."

11 Keep going?

12 Q. Yes.

13 A. "I could be all sweetness and light, 'cause you know what a  
14 softy I am, and we may do that when we're done, but in the end, I  
15 have decided to say a couple of things very bluntly to you, and if  
16 you are rolling your eyes as if this will not pertain to you,  
17 well, then it probably does pertain to you, so you'd better listen  
18 up."

19 Q. What do you say at subparagraph 1?

20 A. "Working at Colonial Bank in mortgage warehouse lending is a  
21 privilege, not a right. You don't realize how great you have it.  
22 Do you know that Colonial pays for the parking of all its  
23 employees (which includes our I-placement employees)? That's \$80  
24 per month per employee every month of the year. Most downtown  
25 employers" --

Kissick - Cross

971

1 Q. Stop. Go to the third paragraph, "I hear all sorts," and  
2 read that part, please.

3 A. "I hear all sorts of grumbling via the grapevine: Oh, my  
4 supervisor is so mean. She makes us e-mail her when we leave.  
5 Oh, my supervisor never pays attention to us, or my supervisor  
6 micromanages us. Oh, it's so unfair. I-placement employees  
7 didn't get bonuses, wah, wah, wah. Well, here's the deal. If you  
8 don't like working here, leave."

9 Q. And an i-placement employee is what?

10 A. Temps.

11 Q. Okay.

12 A. Temp to perm.

13 Q. And so I-placement --

14 MR. STOKES: Your Honor, I'm just going to object. I'm  
15 not sure of the relevance of this document.

16 THE COURT: I was wondering the same --

17 MS. KARINSHAK: Your Honor, I'm getting to the.

18 THE COURT: Get to it then.

19 BY MS. KARINSHAK:

20 Q. Let's get to "sloppy work" in that letter, please.

21 A. Where is this?

22 Q. It's on page 3 of this. Do you see the section "Sloppy  
23 Work"?

24 A. "Sloppy Work," yes. "Did you know that the overdraft report  
25 goes to Credit Admin every day in Montgomery and is shown to our

Kissick - Cross

972

1 auditors? Did you know that over 60 percent of MWL overdrafts are  
2 due to analyst errors? How'd you like it if you got your  
3 MasterCard bill and there were mistakes on it monthly and that  
4 every six out of ten charges on it were due to some clerk not  
5 doing his/her job? These mistakes take more work to unwind than  
6 just a simple credit ticket. Account Analysis has to also be  
7 notified, because there is a prime plus 2 percent charge for  
8 overdrafts. Additionally, it looks bad within the rest of the  
9 bank. Credit in Montgomery reviews them, and it makes our credit  
10 officers wonder if the customer has a problem. We don't always  
11 tell them" --

12 THE COURT: Slow down, please.

13 THE WITNESS: I'm sorry. "We don't always tell them  
14 it's Operations' fault, because then it will look like we don't  
15 hire competent employees. People think their little typos or  
16 transpositions don't matter, but they do."

17 BY MS. KARINSHAK:

18 Q. And then the last paragraph please? Actually, let's just go  
19 to the last sentence -- well, there's a sentence that starts,  
20 "How'd you like to sign your life away on a mortgage?" Read that  
21 to end, please.

22 A. "How'd you like to sign your life away on a mortgage and then  
23 possibly have to go in and re-sign all of the docs because your  
24 mortgage company's bank lost the note? First, I'd think I was  
25 being scammed; and secondly, it doesn't look good to our customer.

Kissick - Cross

973

1 Banks are supposed to be sound and secure and not a black hole  
2 pit, like some teenager's bedroom."

3 Q. Now, you wouldn't have been writing this -- you gave, you  
4 gave a speech as to this, correct? This is what you told the  
5 employees?

6 A. Right.

7 Q. Okay. You wouldn't have been writing all of this and saying  
8 all of this -- I mean, you took the trouble to write it down to  
9 make sure you said everything you needed to say, correct?

10 A. Um-hum.

11 Q. You wouldn't have been writing this had your group not been  
12 shipping notes to the wrong investor as well as losing notes,  
13 correct?

14 A. Well, that didn't really apply to Taylor Bean, because we  
15 didn't have to ship notes to an investor. We took them downstairs  
16 to custody. This happened to a couple of customers in particular,  
17 and it really rattled me, because it was good customers, and it  
18 was temporaries that were doing it, and that's why I decided  
19 enough was enough.

20 Q. Now, can you say without hesitation that there was no error  
21 with shipping notes to the wrong investor or losing notes with  
22 respect to Taylor, Bean & Whitaker?

23 THE COURT SECURITY OFFICER: The Court's indulgence?

24 THE WITNESS: Sorry, I don't know what I'm doing.

25 Breathing, I guess. There you go.

Kissick - Cross

974

1 THE COURT: Technology. A piece of sponge.

2 THE WITNESS: Now you won't hear me breathe anymore.

3 Yeah.

4 Hello? Much better.

5 BY MS. KARINSHAK:

6 Q. Now, do you remember my question? Can you say under oath  
7 that here and without hesitation, that there was never an instance  
8 where you shipped notes to the wrong investor and/or lost notes  
9 with respect to Taylor, Bean & Whitaker?

10 A. I cannot say that without hesitation, because I'm sure we did  
11 every once in a while, but by and large, our group was very good.

12 Q. Well, by and large, you're trying to do your job, correct?

13 A. Yes.

14 Q. And you're, and you're the head, and you're the head of the  
15 division, and you're trying to do a good job for your, for your  
16 company but also for your clients, correct?

17 A. Yes.

18 Q. And are you aware that part of this prosecution is about the  
19 finding that some of Taylor, Bean & Whitaker notes, there's just  
20 not enough notes, correct?

21 A. Correct.

22 Q. And have you tried to help the government figure out which  
23 notes with respect to Taylor, Bean & Whitaker may or may not have  
24 been lost?

25 A. They were not lost.



Kissick - Cross

975

1 Q. As part of your cooperation, though, have you gone down and  
2 reviewed all those records to be absolutely certain that you can  
3 say that without hesitation and here under oath before the jury?

4 A. I have not helped them, but I can honestly under oath tell  
5 you that they were not lost. They were never given to us.

6 Q. Well, what about you said there might have been a wrong  
7 investor? Isn't that a possibility?

8 A. No.

9 Q. Did you go down and double-check with the government as part  
10 of your cooperation to see if any of the notes went to the wrong  
11 investor?

12 A. No. I wasn't -- first of all, after I left, I wasn't allowed  
13 to go back, but secondly, your point is misleading, because we  
14 didn't get the notes to begin with. They weren't sent to the  
15 wrong investor. We never got them.

16 Q. I understand that's your testimony, ma'am, but I'm just  
17 trying to clarify.

18 A. Okay.

19 Q. You haven't been down there with the government to  
20 double-check each and every one of those things, have you?

21 A. No, I have not.

22 Q. You haven't been able to re-access the bank, right?

23 A. No, I have not.

24 Q. You were gone, and you've been gone, correct?

25 A. Yes, I have.

Kissick - Cross

976

1 Q. And, in fact, you admitted here in this document and when you  
2 met with your employees that your operation looked like some  
3 teenager's bedroom, correct?

4 A. It was probably in 2006, but, you know, I don't think we were  
5 talking about Taylor Bean, but yes, I did say that.

6 Q. So at some point in your operation, it would be fair to say  
7 it looked like a teenager's bedroom. Otherwise, you wouldn't have  
8 gone through this, correct?

9 A. I was making a point because normally I joke around and have  
10 fun, and for me to say this mean was pretty shocking to my staff,  
11 and so, you know, it was for effect, but we do have a very -- we  
12 had a very good operational staff.

13 Q. I understand, ma'am, but when you answer the questions, would  
14 you please say "yes" or "no" first? And then you can --

15 A. Okay. Would you please repeat your question?

16 THE COURT: I think this whole line of questioning is a  
17 little off.

18 MS. KARINSHAK: Okay.

19 THE COURT: Let's move on.

20 BY MS. KARINSHAK:

21 Q. All right. Ms. Kissick, you have a master's degree, correct?

22 A. Yes.

23 Q. And what is that in?

24 A. Management and marketing.

25 Q. Okay. And do you have an undergraduate degree?

Kissick - Cross

977

1 A. Yes.

2 Q. And what is that in?

3 A. English.

4 Q. And I meant to ask you, I apologize, where was your master's  
5 degree from?

6 A. Miami University.

7 Q. And is that in Ohio?

8 A. Yes.

9 Q. Okay. And your undergraduate degree is from where?

10 THE COURT: Now, what's the relevance of that?

11 MS. KARINSHAK: Your Honor, I'm just trying to build it.

12 THE COURT: Well, let's just move this along.

13 MS. KARINSHAK: All right.

14 Q. Now, how many years in banking -- how many years of banking  
15 experience do you have?

16 A. I started a training program in '86, in the fall of '86, and  
17 I started lending, doing banks to -- loans to small banks in '87.

18 Q. And your first 11 years in the banking industry were with  
19 SunTrust, correct?

20 A. Correct.

21 Q. Then you had 11 years with Colonial Bank, correct?

22 A. Correct.

23 Q. So that's a total of 22 years in banking, correct?

24 A. Correct.

25 MS. KARINSHAK: Could you please show her Defendant

Kissick - Cross

978

1 Exhibits 185 through 188?

2 THE COURT: Are they not in our notebook?

3 MS. KARINSHAK: I just was handed these, Your Honor.

4 THE COURT: All right. Well, by my count, I think we've  
5 been at it two hours. I went past the normal break time. My  
6 jurors are letting me know that.

7 MS. KARINSHAK: Oh, I'm sorry.

8 THE COURT: So let's take a break this afternoon until  
9 10 after.

10 (Recess from 3:55 p.m., until 4:10 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Kissick - Cross

979

1           NOTE: The case continues in the presence of the  
2 defendant and the jury as follows:

3 JURY IN

4           THE COURT: Mr. Stokes, or Mr. Connolly, I understand  
5 you want to release a witness?

6           MR. ROGOW: We do, Your Honor. Mr. Barofsky had been  
7 subpoenaed. He has a trip that he wants to go on. We are going  
8 to release him with a stipulation from the Government that the  
9 subpoenas that he signed to Colonial, the SIG TARP report to  
10 Congress, and Mr. Barofsky's resignation letter to President Obama  
11 memoranda all are authentic, and the copies we have we will then  
12 be able to introduce without having Mr. Barofsky here.

13           THE COURT: All right. The Government is comfortable  
14 with that stipulation?

15           MR. CONNOLLY: Yes. We aren't challenging the  
16 authenticity. We may have objection as to relevance, but we won't  
17 challenge the authenticity of those documents.

18           THE COURT: All right. Then the subpoena is now  
19 quashed, it's over, and Mr. Barofsky may go on with his life.

20           MR. ROGOW: Thank you, Your Honor.

21           MR. CONNOLLY: Thank you, Your Honor.

22           THE COURT: All right, let's continue, please.

23 BY MS. KARINSHAK: (Continuing)

24 Q. Now, I believe Ms. Kissick, you have Defendant's Exhibits  
25 185, 186, and 187 and 188?

Kissick - Cross

980

1 A. Yes.

2 MS. KARINSHAK: And we moved those in. Are those in  
3 evidence.

4 MR. STOKES: No objection, Your Honor.

5 THE COURT: All right, they are in.

6 (Defendant's Exh. Nos. 185, 186, 187 and 188 were received in  
7 evidence)

8 BY MS. KARINSHAK: (Continuing)

9 Q. Okay. And 185, 186, Ms. Kissick, 185 shows that that is your  
10 office and it has your title on the door there, correct?

11 A. Correct.

12 Q. And moving to 186, is that an accurate picture of your  
13 office?

14 A. Yes.

15 Q. 187 as well?

16 A. Yes.

17 Q. And it shows some of your memorabilia as well as some of your  
18 pictures in your office?

19 A. Yes.

20 Q. 188?

21 A. Yes.

22 Q. Now, could you please show the witness Defendant's Exhibits  
23 251B and C.

24 MR. STOKES: I am sorry, Your Honor, again no objection.

25 THE COURT: All right, they are in.

Kissick - Cross

981

1 (Defendant's Exh. Nos. 251B and 251C were received in  
2 evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Ms. Kissick, does Defendant's Exhibit 251B, is that your  
5 organizational chart for the Mortgage Warehouse Lending Division?

6 A. Yes.

7 Q. And it shows you as the senior vice-president and the  
8 director of the division, correct?

9 A. Yes.

10 THE COURT: I will tell you, if the jury can read that,  
11 their eyes are a whole lot better than mine. That's a terrible  
12 exhibit.

13 Q. Your Honor, unfortunately, we don't have a better one, I  
14 apologize.

15 And moving to 251C, that's a little bit better, but it  
16 doesn't show all the people, is that correct?

17 A. This is for a different area within our department.

18 Q. Okay. Which area is that for?

19 A. Document custody.

20 Q. Okay. And the first one, 251B, shows pretty much everyone in  
21 your organization and how they report to you, correct?

22 A. It doesn't show doc custody. It just shows, I don't think,  
23 it just shows the funding side and the pay-down side and the  
24 lenders.

25 Q. Okay. So, between 251B and C, it shows all the people over

Kissick - Cross

982

1 which you had control and authority, correct?

2 A. Yes.

3 Q. And so, we would need both pages to actually show the  
4 fullness of your responsibilities at the Mortgage Warehouse  
5 Lending Division, correct?

6 A. Correct.

7 Q. And approximately how many employees is that that you  
8 supervised?

9 A. I don't know if the temps are on here, but we had about 118  
10 people.

11 Q. And I believe you said you had at least 100 customers,  
12 correct?

13 A. Yes.

14 Q. And what was the amount in assets that you had in 2008?

15 A. 2008? Probably 5 billion. About 5 billion.

16 Q. And talking about your division, I believe you had testified  
17 that you met Mr. Farkas when you were employed at SunTrust,  
18 correct?

19 A. Correct.

20 Q. And your relationship with Mr. Farkas, it was only a  
21 professional relationship, correct?

22 A. I liked him.

23 Q. So--

24 A. Except for, you know, a couple times in 2002. No, kidding.  
25 We had-- He was always very nice.



Kissick - Cross

983

1 Q. But you weren't intimate with Mr. Farkas, correct?

2 A. No, no, no, no.

3 Q. And you testified you didn't get any kickbacks from Mr.  
4 Farkas?

5 A. Okay, please, moment here.

6 Q. I'm sorry?

7 A. Nothing. No, nothing.

8 Q. No kickbacks, correct?

9 A. Nothing.

10 Q. And no gifts?

11 A. No. Well, he gave me a birthday gift occasionally. I had  
12 surgery, sent flowers.

13 Q. Okay. And that was because of your professional  
14 relationship?

15 A. Yes.

16 Q. And your working relationship, correct?

17 A. Right.

18 Q. And you had been working with Mr. Farkas since about  
19 September 1999?

20 A. At Colonial, but before that I was at SunTrust.

21 Q. And how long had you worked with him at SunTrust?

22 A. Actually just a few months before I left.

23 Q. And would it be fair to say you brought him over as a  
24 customer when you went to Colonial Bank?

25 A. It was about a year later, a little about over a year later.

Kissick - Cross

984

1 Q. And would it be fair to say you brought TBW over as a  
2 customer because that would be good for you as the head of the  
3 Mortgage Warehouse Lending Division, correct?

4 A. Well, it would be good for my department, correct.

5 Q. Would it be fair to say to TBW had been profitable every year  
6 since it's since inception you had been dealing with them?

7 A. Yes.

8 Q. And TBW was in fact your largest customer, correct?

9 A. They definitely grew into being our largest customer.

10 Q. Now, would it be fair to say that when you are working with a  
11 warehouse line, the more you have, the more you lend, the more  
12 money you make as you turn it?

13 A. Yes.

14 Q. And what does that mean, as you turn it? What does that  
15 mean?

16 A. Collateral goes through the line, you close, and then you are  
17 able to close new loans.

18 Q. So, it's based on a lot of volume, correct?

19 A. Correct.

20 Q. So, the more you move, the more you make?

21 A. Correct.

22 Q. And didn't you also previously say in sworn testimony that  
23 you can't view the line like a finite building loan that you have  
24 to pay back. It's a good thing to raise the debt ceiling to allow  
25 TBW to grow, which also helps pay back your investment?

Kissick - Cross

985

1 A. I'm sure I did say that. I don't remember saying that, but  
2 that sounds correct.

3 Q. That is something that would be true, correct?

4 A. Yes.

5 Q. And isn't it true that you received audited financial  
6 statements from TBW annually?

7 A. Yes.

8 Q. Did you also receive monthly unaudited financial statements  
9 from TBW?

10 A. Yes.

11 Q. Now, we have been talking about PINs quite a bit. And could  
12 you put up Government's Exhibit 1-13, please. Or actually show  
13 that to the witness.

14 MR. STOKES: No objection, Your Honor.

15 THE COURT: Then it's in.

16 (Government's Exh. No. 1-13 was received in evidence)

17 MS. KARINSHAK: It is Government's Exhibit, I'm sorry,  
18 Government's Exhibit 1-13.

19 BY MS. KARINSHAK: (Continuing)

20 Q. And in Government's Exhibit 1-13, that's written on your  
21 Colonial Bank e-mail, isn't it?

22 A. Yes.

23 Q. And it's not written from a PIN, correct?

24 A. Correct.

25 Q. And the bank has e-mail or actually has software to search

Kissick - Cross

986

1 key e-mails for terms, isn't that right?

2 A. I assume so, yes. I didn't know at the time.

3 Q. Okay. So, when you are talking about going to prison, you're  
4 kidding, correct? It's on your company e-mail?

5 A. I was joking, but there was some truth to it.

6 Q. And when did you actually get a BlackBerry?

7 A. 2004, '05 maybe.

8 Q. So, prior to that would you have e-mailed business, if you  
9 were working on business from your home, would you have used your  
10 home computer?

11 A. I would have used the Colonial line if the VPN worked, but a  
12 lot of times it didn't work, so that's when I used hotmail.

13 Q. That's when you used your hotmail account?

14 A. Yes.

15 Q. So, for example, if you are e-mailing from hotmail, it's not  
16 that you are necessarily hiding anything, it's that you're  
17 e-mailing from home rather than being able to access--

18 A. The VPN, I couldn't get on.

19 Q. Isn't it true that the banking industry that you are in is  
20 highly regulated?

21 A. Yes.

22 Q. I believe we talked about, but your bank was regulated by  
23 whom?

24 A. At the end it was regulated by the State of Alabama and the  
25 FDIC.

Kissick - Cross

987

1 Q. And in the course of your relationship with Taylor Bean &  
2 Whitaker, you had mentioned these Mortgage Warehouse Loan  
3 Committee meetings where you discussed your relationships with  
4 different borrowers, correct?

5 A. Correct.

6 Q. And sometimes there would be business brought before those  
7 meetings as to what you wanted to do with particular customers,  
8 correct?

9 A. Correct.

10 Q. And who would typically attend these meetings?

11 A. The Warehouse Committee meetings were Kamal, Kamal Hosein,  
12 Mary Lou Bathen, myself, Caryn Cope, Amy Nunnelley. I can't  
13 remember.

14 Q. Okay. But those are all higher-ups in the organization,  
15 correct?

16 A. Kamal is, yes, and Caryn Cope is.

17 Q. What about Mary Lou Bathen?

18 A. She was in Montgomery, I think she was my equal level.

19 Q. Could you please give Ms. Kissick Defendant's Exhibit 202.

20 THE COURT: Any objection?

21 MR. STOKES: Judge, I am not sure what the relevance of  
22 this is. This appears to be related to some unrelated company.

23 MS. KARINSHAK: Actually, if you look to the fourth  
24 page, Taylor Bean & Whitaker is listed.

25 MR. STOKES: No objection, Your Honor.

Kissick - Cross

988

1 THE COURT: All right, it's in.

2 (Defendant's Exh. No. 202 was received in evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Now, we were just talking about the Mortgage Warehouse Loan  
5 Committee meetings, Ms. Kissick. And isn't it true that  
6 Defendant's Exhibit 202 is just an example of one of those type of  
7 meetings that was held December 3, 2007?

8 A. Yes, correct.

9 Q. And then turn to the fourth page, that would be where it says  
10 ratifications and it listed the borrower, Taylor Bean & Whitaker  
11 Mortgage Corporation, correct?

12 A. Correct.

13 Q. And this is a ratification that has Rodney Lewis as the  
14 officer, correct?

15 A. Correct.

16 Q. And it's a renewal and modification of your relationship with  
17 Taylor Bean & Whitaker at that time, correct?

18 A. Yes.

19 Q. And it talks about renewing and decreasing different lines,  
20 and it talks about the number and type of sublimits, correct?

21 A. Yes.

22 Q. And it also talks about the rates and fees that are being  
23 paid with respect to conforming, wet, nonconforming, repurchase  
24 and aged loans, correct?

25 A. Correct.

Kissick - Cross

989

1 Q. And so, what is a LIBOR rate?

2 A. It's an index, the London Interbank Offered Rate. I wouldn't  
3 know what it is right now, but it was what we priced off of.

4 Q. You used that is the standard from which you set your  
5 interest rates, correct?

6 A. Correct.

7 Q. And so, Taylor Bean & Whitaker would be paying the fees that  
8 are listed here to your bank related to these different lines, the  
9 conforming, wet, nonconforming, repurchase and aged loans, I  
10 should say?

11 A. Correct.

12 Q. So, for example, for an aged loan, it would be 30-day LIBOR  
13 plus 270 basis points?

14 A. Yes.

15 Q. And this is, you are bringing this business before the  
16 committee for them to vote on this, correct?

17 A. The officer was, Rodney, yes.

18 Q. And so, this is being approved with respect to Taylor Bean &  
19 Whitaker?

20 A. Correct.

21 Q. And it also on that next page, turning to the next page,  
22 there is a conversation or listing of the collateral, correct?

23 A. Correct.

24 Q. And here it lists that there is a possessory ownership  
25 interest in a residential first or second lien mortgage loan with

Kissick - Cross

990

1 a backup security interest in the event the courts reclassify the  
2 transaction as a debt arrangement and a further security interest  
3 in any ancillary mortgage collateral, correct?

4 A. Right.

5 Q. And then there is listed under number II a possessory  
6 interest and gives more details on that. It also lists  
7 cross-collateralization with TBW's permanent servicing portfolio  
8 and other receivables from prior servicing sale holdbacks and  
9 residentials from securitizations, correct?

10 A. Residuals, yes, from securitizations.

11 Q. And what is important about the cross-collateralization?

12 A. I did that to cover any other facilities.

13 Q. I'm sorry?

14 A. I did that to protect the bank in case anything else happened  
15 on any other facilities.

16 Q. Okay. And then under subsection III there is more collateral  
17 listed here as well, correct?

18 A. Correct.

19 Q. And then additionally, listed additionally Colonial Bank has  
20 100 percent of the common stock of the owner Lee B. Farkas, and I  
21 believe it was 79.2 percent at that time, correct?

22 A. Yes.

23 Q. And then you also have a guarantor which says unlimited, Lee  
24 B. Farkas, correct?

25 A. Yes.



Kissick - Cross

991

1 Q. And what does that mean, an unlimited guarantor?

2 A. We had our, the owners of the companies guarantee the lines  
3 of credit.

4 Q. The owners of the companies guaranteed the lines of credit?

5 A. Yes.

6 Q. With their word, correct?

7 A. Right.

8 Q. Now, in addition, with respect to your relationship with  
9 Taylor Bean & Whitaker, did you also have occasion to present  
10 credit packages for approval?

11 A. Did I?

12 Q. You or someone on your behalf?

13 A. Yes.

14 Q. At Colonial Bank? All right, could you please hand  
15 Defendant's Exhibit 204, please.

16 THE COURT: Any objection?

17 MR. STOKES: The Court's indulgence.

18 No objection, Your Honor.

19 THE COURT: All right, it's in.

20 (Defendant's Exh. No. 204 was received in evidence)

21 BY MS. KARINSHAK: (Continuing)

22 Q. Ms. Kissick, this would just be one of many credit packages  
23 that would have gone for approval, but this one is dated  
24 January 28, 2009, correct?

25 A. Correct.

Kissick - Cross

992

1 Q. And this is a credit package that shows an extension and  
2 modification for Taylor Bean & Whitaker, correct?

3 A. Yes.

4 Q. And looking at page 2, it talks about the different  
5 facilities, correct?

6 A. Correct.

7 Q. Overline, working capital line, retention of MSR, and  
8 servicing advances, correct?

9 A. Correct.

10 Q. And down here on that same page it lists the collateral  
11 again, we have two different types of collateral listed for these  
12 lines, correct?

13 A. Yes.

14 Q. First being the possessory interest that we have already  
15 talked about. And then for number II, the collateral assignment  
16 of borrower's accounts and claims receivable, and all rights to  
17 payments and reimbursements under its servicing agreements,  
18 contracts and trust indentures related to the pledged receivables.  
19 Pledge of the borrower's portfolio of residential mortgage  
20 servicing rights purchased/retained under the facility and  
21 assignment of all the borrower's rights to service loans,  
22 including the right to receive prepayment penalties, if any, on  
23 the servicing rights purchased, correct?

24 A. Correct.

25 Q. What does that mean?

Kissick - Cross

993

1 A. Can you repeat that? I am sorry.

2 Q. The number II part that I just read to you. What does that  
3 mean for us? What kind of collateral?

4 A. Just repeat it, what you just said again. I'm sorry.

5 Q. Number II, I am looking at--

6 A. Collateral assignment of the borrower's accounts and claims  
7 receivables?

8 Q. Yes.

9 A. We have an assignment of every account and receivable that  
10 they have for anything dealing with the servicing.

11 Q. For anything to do with servicing?

12 A. Anything pertaining to the servicing under the working  
13 capital line.

14 Q. Okay. And that's-- And then the number I part is the  
15 collateral for the overline, correct, the subpart I?

16 A. Correct.

17 Q. Which is the possessory interest in the residential first or  
18 second lien mortgage loan?

19 A. Correct.

20 Q. So, the collateral ties up to the facilities at the top of  
21 the page such that the I goes to the overline and II goes to the  
22 working capital line, is that right?

23 A. Yes.

24 Q. And then again it lists the common stock of the owner Lee B.  
25 Farkas as well as a first lien position in the stock of Ocala

Kissick - Cross

994

1 Servicing, correct?

2 A. Correct.

3 Q. And then it says, all the facilities are cross-defaulted and  
4 cross-collateralized, that's right?

5 A. Yes.

6 Q. And why is it important that something be cross-defaulted?

7 A. Because if you have a default on one, it triggers a default  
8 on all of them.

9 Q. And that means you could, if one defaults, then you as a bank  
10 can trigger it for all of them and get paid as to all of the  
11 facilities, correct?

12 A. You could call them in default, correct.

13 Q. Call them all in default and get paid immediately, correct?

14 A. Correct.

15 Q. And then cross-collateralization, why is that important to  
16 you?

17 A. Because we had the collateral for all the facilities being  
18 available for all the facilities.

19 Q. So, the collateral for AOT would be available for the  
20 collateral for COLB, correct?

21 A. Well, for these they are. I'd have to read the documents  
22 again.

23 Q. Okay. But the point being that some of the collateral can be  
24 used for each and every line, it's not just for one line, it can  
25 be used for all the lines, correct?

Kissick - Cross

995

1 A. I had set it for the overline to be cross-collateralized to  
2 protect us in case of any problems on any facility, including AOT  
3 and COLB.

4 Q. All right. Ms. Kissick, the bottom line is would it be fair  
5 to say that Colonial Bank for all practical purposes owned Taylor  
6 Bean & Whitaker?

7 A. I don't really think that's a fair question to ask. I don't  
8 know.

9 Q. Well, you have got the collateralization--

10 THE COURT: Well, if the witness doesn't know, she  
11 doesn't know.

12 Q. And then again moving to page 3, you have got the personal  
13 guarantee of Mr. Farkas as well, correct?

14 A. Yes.

15 Q. Then on page 6, or actually on page 5, let's look at that for  
16 a moment. We have got reporting requirements for the borrower as  
17 well as the guarantor, and then we have the conditions. And that  
18 again lists the key man life insurance on Mr. Farkas remaining  
19 assigned to the buyers/lenders. Which is you, Colonial Bank,  
20 correct.

21 A. Correct.

22 Q. And those go over to the next page, there are several  
23 conditions listed, 21 in all, correct?

24 A. Yes.

25 Q. And again, talks about pledging of the stock of TBW to

Kissick - Cross

996

1 Colonial Bank until all obligations are paid in full and in fact  
2 Mr. Farkas' stock is currently being held in escrow by the law  
3 firm Akerman Senterfitt, correct?

4 A. Yes.

5 Q. And that would be Mr. Vescovacci's firm, correct?

6 A. Yes.

7 Q. And moving down to number 17, number 17 shows the easy  
8 payment plan, correct?

9 A. No. This was nothing to do with that. This was the  
10 servicing working capital facility, and that was a payment that  
11 one of the banks imposed in the servicing facility, I think it was  
12 Sovereign Bank.

13 Q. And then on page 7 is the officer analysis which talks about  
14 the reasons for the current request, correct?

15 A. Yes.

16 Q. And then in the third paragraph, it talks about that TBW has  
17 made significant pay-downs to the syndicated credit relationship  
18 over the first 90-day extension. And then it gives more reasons  
19 about this request and that TBW is moving forward with the  
20 ventures that will potentially lead to significant retirement of  
21 the outstandings under the working capital facility, correct?

22 A. Yes.

23 Q. And the outstandings, what is that?

24 A. The amount that was outstanding.

25 Q. The amount that is due to Colonial Bank?

Kissick - Cross

997

1 A. Yes.

2 Q. So, this is showing that TBW is making progress towards  
3 paying that off, right?

4 A. Right, but this is not-- The only part that is showing here  
5 is the Colonial Bank portion. There was a lot of other portion  
6 with other syndicate banks. This was just our portion.

7 Q. Okay. Well, we are focusing on the Colonial Bank portion,  
8 correct? And then it talks about-- Well, actually strike that.

9 And then again on page 8 it talks about the borrower  
10 description and competitive analysis, and this gives information  
11 about TBW being a leading independent mortgage banking company  
12 that's ranked seventh largest, it's the seventh largest  
13 residential wholesaler based on volume, sixth largest issuer to  
14 Freddie Mac, sixth largest issuer to Ginnie Mae MBS, top 20  
15 servicer nationwide, 11ths largest servicer of Freddie Mac loans,  
16 and the ninth largest servicer of Ginnie Mae loans, correct?

17 A. Yes.

18 Q. And then it talks about in that final paragraph that TBW has  
19 achieved the status by originating and purchasing loans through  
20 community bank and wholesale broker channels utilizing  
21 sophisticated technology and emphasizing a high level of customer  
22 service, correct?

23 A. Yes.

24 Q. And who puts together this credit package?

25 A. This was done by Rodney Lewis.

Kissick - Cross

998

1 Q. So, he is involved with your relationship with Taylor Bean &  
2 Whitaker, correct?

3 A. Yes.

4 Q. Then moving to page 13. This again is talking about the MSR  
5 portfolio at the top of the page. And it is showing the portfolio  
6 characteristics held as collateral by the bank group, it has a  
7 chart there, correct?

8 A. Yes.

9 Q. And so, again that is showing the collateral, correct?

10 A. Correct.

11 Q. And then moving further down under the second chart it says,  
12 as a condition to the loan agreement, TBW is required to deliver  
13 to the bank group an independent third-party valuation on the  
14 market of the PSR, the market value of the MSR portfolio, correct?

15 A. Yes.

16 Q. And then it talks about how they are getting this value for  
17 the MSR portfolio, correct?

18 A. Yes.

19 Q. And MSR stands for mortgage servicing rights?

20 A. Yes.

21 Q. And then at the bottom chart, the value that it is showing  
22 here, that is the value of the MSR portfolio for the past four  
23 fiscal years and the current interim, correct?

24 A. That is correct.

25 Q. And what is the value in fiscal year 2006?



Kissick - Cross

999

1 A. 254,825,000.

2 Q. I am sorry, could you speak up, please.

3 A. 254,825,000.

4 Q. Then when you move over to 2008, what is the value?

5 A. The fiscal year value is 443,532.

6 Q. And that's in millions again?

7 A. Yes.

8 Q. And then you see a seven-month interim for November 30, 2008,  
9 correct?

10 A. Yes.

11 Q. And what is that value?

12 A. 513,088,000.

13 Q. And then you see an eight-month interim ending in December of  
14 2008, correct?

15 A. Correct. It is 480,061,000.

16 Q. And again, this is the value of the mortgage servicing rights  
17 portfolio, correct?

18 A. Yes.

19 Q. And that's part of the collateral that Colonial Bank holds  
20 with respect to your facilities with Taylor Bean & Whitaker,  
21 correct?

22 A. Yes, it is. We have a second on a portion of it.

23 Q. I'm sorry?

24 A. We have a first on a portion of it and we have a second on a  
25 portion of it.

Kissick - Cross

1000

1 Q. You had a first lien, you had a first on part of it and then  
2 you had a second lien on part of it?

3 A. We had a second lien actually on all of it.

4 Q. And then looking at page 20, we have got a personal financial  
5 statement analysis for Mr. Farkas. And again, this would be  
6 collateral backing up your relationship with respect to these  
7 facilities, correct?

8 A. Correct.

9 Q. And it lists his net worth on this chart, and it also  
10 mentions how much he has in liquid assets and total liabilities,  
11 correct?

12 A. Yes.

13 Q. And also gives a FICO score. And this is important to you  
14 because of his personal guarantee, correct?

15 A. Yes.

16 Q. And it says there on the bottom paragraph, it's very unusual  
17 to get any type of personal guarantee on a credit of this size and  
18 nature. Although Farkas provides little, if any, financial  
19 strength as a guarantor, this provides more of a moral and ethical  
20 guarantee against fraud or misrepresentation by the company  
21 because all of his net worth is tied up in TBW, correct?

22 A. Yes.

23 Q. So, all of his net worth is tied up in TBW, and all of the  
24 value in TBW or at least 79.2 percent is promised as collateral to  
25 your bank, is that right?

Kissick - Cross

1001

1 A. Correct.

2 Q. And then again on this page it mentions that there will be  
3 third party audits by MDI who is going to perform independent  
4 audits of TBW's operations during October 2008 and that MDI has  
5 performed several reviews of TBW for Colonial Bank in prior years?

6 That's correct, that MDI did that for you, correct.

7 A. Yes.

8 Q. And these independent audits, these were people who came from  
9 the outside, correct?

10 A. Right.

11 Q. And they came and reviewed TBW's operations and reported to  
12 you?

13 A. Right.

14 Q. And they would identify things that needed to be improved,  
15 but isn't that true that TBW always got a clean bill of health  
16 from MDI?

17 A. Yes.

18 Q. And then it says in conclusion, based on the extensive  
19 relationship with TBW, the continued profitability and the short  
20 term nature of the request, the proposed extension and  
21 modifications are recommended, correct?

22 A. Correct.

23 Q. Now, we talked about the volume of the kind of business that  
24 TBW and you were in as far as being a Mortgage Warehouse Lending  
25 Division. And isn't that true that because of the type of

Kissick - Cross

1002

1 business that TBW was in, they would be expected to have some  
2 amount of overdraft each month?

3 A. No.

4 Q. No? Isn't it true that Colonial Bank would set a ceiling of  
5 the amount that could be overdrafted?

6 A. Please repeat that.

7 Q. Isn't it true that your bank would set a ceiling of the  
8 amount that could be overdrafted by TBW?

9 A. That was for if they were over their line, not for  
10 operational overdrafts.

11 Q. Now, isn't an overdraft similar to a bank giving someone like  
12 a home equity line of credit? Would that be a fair analogy?

13 A. No, because a home equity line of credit would have a piece  
14 of collateral. It's an unsecured, it's like a credit card,  
15 unsecured line of credit.

16 Q. Okay. That would what you are saying, it would be more like  
17 a credit card?

18 A. Yes.

19 Q. And to the extent there would have been any ceiling of what  
20 you could go over on your limit, who would be approving that for  
21 Mr. Farkas and TBW?

22 A. Are you talking about the Plan B information or just  
23 anything-- There was an approval for an \$11 million overdraft  
24 that we had in this package that we had senior loan committee  
25 approve.

Kissick - Cross

1003

1 Q. Well, let me give you Defendant's Exhibit 213.

2 THE COURT: Mr. Stokes, any objection?

3 MR. STOKES: I am reviewing it. I don't believe so, but  
4 it appears--

5 A. I know it wasn't written on September 10. It was printed out  
6 on September 10 though because we were gone from the bank then.

7 THE COURT: Don't put it on the screen yet.

8 MR. STOKES: Your Honor--

9 THE COURT: We don't have a copy of it. I want to see a  
10 copy of it before it goes up.

11 Mr. Stokes, does your's have writing on it?

12 MR. STOKES: It is not that it has writing. It just has  
13 a date of September 10, 2009. So, it appears to have an incorrect  
14 date. There are two copies of the document in our exhibit. We  
15 can pass up a copy to the Court if you would like.

16 THE COURT: All right.

17 MR. STOKES: It doesn't have an exhibit number on it.

18 We don't have an objection to it, Your Honor.

19 THE COURT: Is the one you are looking at, Ms. Kissick,  
20 does it have writing on it?

21 THE WITNESS: Well, let's see. No, mine do not.

22 THE COURT: Oh, all right. 213 is in.

23 (Defendant's Exh. No. 213 was received in evidence)

24 BY MS. KARINSHAK: (Continuing)

25 Q. Now, Ms. Kissick, you noted that the date was September 10,

Kissick - Cross

1004

1 2009. That would be an incorrect date, correct?

2 A. Definitely.

3 Q. And the correct date would be based on the context of this  
4 document in 2006, correct?

5 A. Yes.

6 Q. But the purpose of this document is to show that there is an  
7 approved overdraft for Taylor Bean & Whitaker, correct?

8 A. Correct.

9 Q. And this memo outlines the request to approve the rolling  
10 overdraft for up to three business days at a time but for no more  
11 than three times a month, correct?

12 A. Correct.

13 Q. And this is an example of approving an overdraft for Taylor  
14 Bean & Whitaker that is done by the senior loan committee,  
15 correct?

16 A. That is correct.

17 Q. And isn't it true that you had authority to approve  
18 overdrafts yourself as the head of the Mortgage Warehouse Lending  
19 Division in the amount of \$500,000, correct?

20 A. Yes.

21 Q. And then otherwise it would go to this loan committee for  
22 approval?

23 A. Yes.

24 Q. And then I note at the bottom of this first page the  
25 paragraph there that says, since Colonial Bank's syndicated

Kissick - Cross

1005

1 working capital line is fully funded and the current bank group  
2 cannot support any additional increases, TBW is funding all of its  
3 new servicing rights under the aforementioned 150 million credit  
4 agreement with CDC IXIS, correct?

5 A. Yes.

6 Q. And the working capital line is fully funded. And basically  
7 what is this telling us in that part of this document?

8 A. What this said was that they were overdrawn and we wanted  
9 them to go about getting it corrected the proper way. So, I had  
10 Rodney prepare an overdraft memo and get it approved because they  
11 were going to have working capital availability at their other  
12 lender, and we were just waiting for it to be completed.

13 Q. And again you talk about TBW is currently overdrawn at  
14 Colonial Bank by three million. So, it would be fair to say that  
15 the fact that they are overdrawn at this point is not a secret,  
16 correct?

17 A. Well, this one is not, correct.

18 Q. Okay. On the second page that's actually as part of this  
19 document, correct?

20 A. Correct.

21 Q. And on the bottom paragraph, the approval of this proposed  
22 overdraft will enable Colonial Bank to aid TBW in their working  
23 capital needs while the legal documentation for the \$35 million  
24 take-out of Colonial Bank's outstandings is facilitated, correct?

25 A. Correct.

Kissick - Cross

1006

1 Q. And it says that TBW's financial strength and strong  
2 collateral is the reason we want to have this overdraft  
3 recommended, correct?

4 A. Correct.

5 Q. Now, moving to Defendant's Exhibit 215. You also received  
6 compliance reports, correct, to Taylor Bean & Whitaker?

7 THE COURT: Is there any objection to 215?

8 MR. STOKES: No objection, Your Honor.

9 THE COURT: All right, it's in.

10 (Defendant's Exh. No. 215 was received in evidence)

11 BY MS. KARINSHAK: (Continuing)

12 Q. Ms. Kissick, looking at the bottom of that e-mail, you are  
13 talking about I saw the compliance report.

14 So, it would be fair to say you got compliance reports  
15 with respect to Taylor Bean & Whitaker?

16 A. Yes.

17 Q. And you saw the compliance report and you saw that there was  
18 some aged loans over 120 days, and you brought that to the  
19 attention of Mr. Farkas, correct?

20 A. Yes.

21 Q. And then he tells you, we got deals cooking, we're selling  
22 all sorts of stuff and making progress, 300 million is a lot, but  
23 not really in relation to our production. It is less than 1  
24 percent of our annual production, correct?

25 A. Yes.



Kissick - Cross

1007

1 Q. So, and then in fact Mr. Farkas again at the top of that  
2 e-mail, says, you know, if you think about it, we're doing 36  
3 billion, with a B, per year in production. And so, 300 million is  
4 less than 1 percent of that, and that's just not bad at all,  
5 correct?

6 A. Well, he sent that to Desiree, I didn't get that, but--

7 Q. But that is shown on this document?

8 A. Yes, but the thing was is that all of his aged loans stayed  
9 at Colonial and he wasn't doing 36 billion with us. And so, as  
10 time went by, more loans stayed on the aged bucket and got more  
11 attention.

12 I mean, he was doing a lot of production, there is no  
13 doubt about that, it's just that the aged loans happened to stay  
14 with Colonial.

15 Q. And I believe it was your testimony that Mr. Farkas  
16 throughout this whole time was trying to work to pay Colonial  
17 Bank, correct?

18 A. He did definitely was, yes.

19 Q. On and on he was working on that the whole time, correct?

20 A. Yes.

21 Q. And you both were working together?

22 A. Yes, we were.

23 Q. In this long-term relationship, correct?

24 A. Yes, we were.

25 Q. And this relationship, it would be fair to say it was based

Kissick - Cross

1008

1 on trust, that over time you had developed a strong trust with Mr.  
2 Farkas, would that be fair to say?

3 A. Yes.

4 Q. And during the course of that relationship or that trust, you  
5 made certain choices about whether to approve and to do certain  
6 things with respect to that relationship?

7 A. Please go on further.

8 Q. I guess what I am trying to say is, you heard the saying life  
9 is about choices?

10 A. Yeah.

11 Q. Well, in this relationship with Mr. Farkas you testified that  
12 you made certain decisions, correct?

13 A. Yes.

14 Q. And you made those decisions as being a banker and someone  
15 who is knowledgeable in the banking industry, correct?

16 A. Yes, I suppose so.

17 Q. And you did that knowing what you were doing because you are  
18 a banker and you know what you are doing with respect to banking?

19 A. No, not all the time.

20 Q. But when you don't know, you consult with others, correct?

21 A. It depends upon the situation. I don't know really what  
22 you're trying to get at, but--

23 Q. Well, in these banking documents we see over and over that  
24 you are consulting with lawyers, correct?

25 A. Yes.

Kissick - Cross

1009

1 Q. You are consulting with auditors, correct?

2 A. Yes.

3 Q. You are consulting with third parties who are coming in to  
4 evaluate the relationship with Taylor Bean & Whitaker, correct?

5 A. Yes.

6 Q. And there is lots of different people who are giving you  
7 advice with respect to your relationship with your, your  
8 relationship with Taylor Bean & Whitaker, correct?

9 A. Correct.

10 Q. And as to all those facilities you had established with  
11 Taylor Bean & Whitaker, you got consultation from experts, for  
12 lack of a better word, from lawyers and the people putting those  
13 documents together, correct?

14 A. Yes.

15 Q. So, to the extent you didn't know what to do, you went to  
16 those people for advice, correct?

17 A. Yes.

18 Q. Okay. Now let's go to Defendant's Exhibit 205.

19 MR. STOKES: No objection, Your Honor.

20 THE COURT: All right, it's in.

21 (Defendant's Exh. No. 205 was received in evidence)

22 BY MS. KARINSHAK: (Continuing)

23 Q. Now, is Defendant's Exhibit 205 an audit confirmation dated  
24 July 11, 2008, which you would have signed?

25 A. Yes.

Kissick - Cross

1010

1 Q. Is that your signature on the second page?

2 A. Yes.

3 Q. Now, you understood that this document was going to outside  
4 auditors Deloitte & Touche, correct?

5 A. Yes.

6 Q. And that it would be important for this to be correct?

7 A. I did understand that, but they were incorrect on AOT.

8 THE COURT: Ms. Kissick, I know it has been a long day,  
9 but you are going to have to stay closer to that microphone.

10 THE WITNESS: I am sorry, what?

11 BY MS. KARINSHAK: (Continuing)

12 Q. Could you repeat your answer.

13 A. I said, yes, I understood that. And it was correct except  
14 for AOT.

15 Q. But you signed it as being true and accurate?

16 A. Yes.

17 Q. And you knew it was essential to Taylor Bean & Whitaker  
18 having good and accurate financial statements, correct?

19 A. Yes.

20 Q. And you still signed this, you just said that there is  
21 something incorrect on there, but you still signed it?

22 A. Well, they were aware of it as well.

23 Q. I'm sorry, you signed it?

24 A. I did sign it, yes.

25 Q. And isn't it true that you showed all the lines were

Kissick - Cross

1011

1 adequately collateralized, the warehouse line, the overline,  
2 working capital, on this document?

3 A. Yes.

4 Q. And it also shows that your group was paid \$216 million in  
5 interest in the previous 12 months alone, correct, in that  
6 category of cash paid for interest?

7 A. That's what it looks like, yes.

8 Q. Is that what the document says?

9 A. Yes.

10 Q. And Taylor Bean & Whitaker was Colonial Bank's most  
11 profitable relationship, correct?

12 A. Yes.

13 Q. And here it shows you are getting 216, almost \$217 million in  
14 interest, correct?

15 A. Correct.

16 Q. And then it also shows that there is some unpaid interest  
17 which will be due, which is 13 million and some change, correct?

18 A. Yes.

19 Q. This also shows that these lines are collateralized and  
20 making money, in fact some of them are overcollateralized and have  
21 more than enough money, correct?

22 A. Yes.

23 Q. All right, moving to Defendant's Exhibit 560.

24 THE COURT: Any objection?

25 MR. STOKES: No objection, Your Honor.

Kissick - Cross

1012

1 THE COURT: All right, it's in.

2 (Defendant's Exh. No. 560 was received in evidence)

3 BY MS. KARINSHAK: (Continuing)

4 Q. Ms. Kissick, this is another audit confirmation dated June 5,  
5 2009, correct?

6 A. Correct.

7 Q. Now, again, it's showing the different facilities and the  
8 interest rates that are being paid by Taylor Bean & Whitaker,  
9 correct?

10 A. Excuse me, I only have one page.

11 THE COURT: That's all we have as well.

12 Do you have two pages?

13 MR. STOKES: I have two, Your Honor.

14 BY MS. KARINSHAK: (Continuing)

15 Q. Let's just work on the first page.

16 A. That's not the one I have though.

17 Q. Sorry?

18 A. I don't have the first page.

19 Q. Oh, you don't have the first page. 560, is there a defense--  
20 You don't have a defense 560?

21 A. No, I only have one page.

22 THE COURT: You only have the last page?

23 THE WITNESS: Yes.

24 MS. KARINSHAK: Okay. We will come back to that, Your  
25 Honor.

Kissick - Cross

1013

1 THE COURT: Well, no, here, here.

2 Go ahead, ask your question.

3 BY MS. KARINSHAK: (Continuing)

4 Q. Moving to 561, please.

5 THE COURT: I'm sorry, are you using 560 or not? She  
6 has got the first page.

7 MS. KARINSHAK: Oh, I am sorry, I thought we didn't have  
8 the first page.

9 THE COURT: We gave her ours.

10 MS. KARINSHAK: Okay. Let's go back then.

11 BY MS. KARINSHAK: (Continuing)

12 Q. Ms. Kissick, you have both pages?

13 A. Yes.

14 Q. All right. Going to the first page of Defendant's  
15 Exhibit 560. That is again showing the audit confirmation for  
16 June 5, 2009, correct?

17 A. Yes.

18 Q. And again, here I want to focus on what are your interest  
19 rates on the different lines. For example, what is the interest  
20 rate Taylor Bean & Whitaker is paying on COLB?

21 It is 4.5 to 5.65 percent, correct?

22 A. Yes.

23 Q. And on the AOT, the interest rate being paid by Taylor Bean &  
24 Whitaker is 5.23 to 5.5 percent, correct?

25 A. Correct.

Kissick - Cross

1014

1 Q. And the interest on the overline is actually the highest  
2 interest, which is 6.5 percent, correct?

3 A. Correct.

4 Q. And what is the interest rate on the loans that are being  
5 swept?

6 A. What?

7 Q. When you were talking about sweeping before, the loans that  
8 are being swept, are you getting an interest rate paid on those  
9 loans?

10 A. We weren't sweeping loans then.

11 Q. Prior when you were sweeping loans, not during this time  
12 period, but when you testified that prior you had been sweeping  
13 loans, what was the interest rate that Taylor Bean & Whitaker was  
14 paying to you on those loans?

15 A. Six years before? Whatever the prevailing rate was.

16 Q. Do you have an estimation of what the prevailing rate would  
17 have been?

18 A. No, I don't know. And I never saw this because I was on  
19 medical leave. So, I never saw this at the bank.

20 Q. Well, isn't it true that Taylor Bean & Whitaker paid between  
21 20 and \$30 million per month in interest during the years of 2007,  
22 2008 and 2009?

23 A. Yes.

24 Q. And that would be on that easy payment plan they were paying  
25 you, correct?



Kissick - Cross

1015

1 A. No. That was on all the facilities they had with us.

2 Q. Okay. And then were they also making payments under the easy  
3 payment plan?

4 A. Of like 50,000 to \$100,000 a day.

5 Q. 50 to 100,000 per day on the easy payment plan?

6 A. Correct.

7 Q. And that's in addition to the interest they are already  
8 paying, correct?

9 A. Correct.

10 Q. And so, in this relationship you are making lots of money  
11 with respect to the interest that is being paid, correct?

12 A. But that easy payment plan wasn't interest. That was  
13 principal that they never had, I mean that we never had.

14 Q. But as to the facilities and these loans that we were just  
15 looking at, you are getting paid 20 to \$30 million a month of  
16 interest during 2007, '8, '9, right?

17 A. Right, but they also had a lot of loans outstanding, so it  
18 wasn't like it was out of market.

19 Q. No, I am not saying it was out of market, I am just saying  
20 you got paid interest on--

21 A. We did get paid interest.

22 Q. Okay. And it was 20 to \$30 million a month, right?

23 A. Yes, it was.

24 Q. Moving to Defendant's Exhibit 561.

25 Now, Defendant's Exhibit--

Kissick - Cross

1016

1 THE COURT: Is there an objection to this one?

2 MS. KARINSHAK: Sorry.

3 MR. STOKES: Judge, no objection if the witness can  
4 identify it.

5 THE COURT: All right, let's see if there is a  
6 foundation for this.

7 BY MS. KARINSHAK: (Continuing)

8 Q. Ms. Kissick, do you recognize Defendant's Exhibit 561?

9 A. I did not-- I was in the hospital. So, I mean, I know what  
10 this is, this is a standard balance confirmation.

11 MR. STOKES: We don't have an objection.

12 THE COURT: All right, it's in.

13 (Defendant's Exh. No. 561 was received in evidence)

14 BY MS. KARINSHAK: (Continuing)

15 Q. Okay, looking at the standard balance confirmation, isn't  
16 this showing the account name, account number, interest rate and  
17 balance with respect to these different bank accounts that Taylor  
18 Bean held at your bank?

19 A. Yes. It looks like they are all escrow accounts.

20 Q. And it is showing the balances on the far right with respect  
21 to all of those accounts, correct?

22 A. Correct.

23 Q. So, there is a Ginnie Mae principal and interest account, a  
24 Ginnie Mae taxes and interest account, and then they are all  
25 listed there on the left-hand side, correct?

Kissick - Cross

1017

1 A. Correct.

2 Q. And in the exceptions or comments, there is a statement that  
3 all the balances are correct?

4 A. That is true.

5 Q. All right. Defendant's Exhibit 552.

6 MR. STOKES: No objection, Your Honor.

7 THE COURT: All right, it's in.

8 (Defendant's Exh. No. 552 was received in evidence)

9 BY MS. KARINSHAK: (Continuing)

10 Q. Ms. Kissick, at the bottom of this e-mail chain it appears to  
11 be from you to Rodney Lewis on June 20, 2009. Do you see that?

12 A. Yes.

13 Q. And basically you are talking to Mr. Lewis in PINs, correct?

14 A. Yes.

15 Q. And Mr. Lewis isn't part of this conspiracy that you have  
16 alleged that you are in, is he?

17 A. No.

18 Q. But you are communicating with him in a PIN?

19 A. Yes.

20 Q. All right. And then up to the top of, I am going to skip the  
21 middle of that e-mail, but at the top, read that for us, please.

22 A. It can't wait until Tuesday. It may not have enough time for  
23 Deloitte to finish the audit. I have a doctor's appointment on 9  
24 at Monday, but if it's then, Mary Lou will be on it with you.

25 Jeff Cavender said that from what he heard it is ridiculous. And

Kissick - Cross

1018

1 he specifically mentioned wet funds. I asked Jeff to have the  
2 independent counsel e-mail the questions to David Byrne. All  
3 parties believe this will be promptly resolved. I think Deloitte  
4 was freaking outing about nothing. But I was worried that if you  
5 didn't appear cooperative, they may think something was up, which  
6 is not the case at all. I can see if David will be on the call  
7 too. I think we were trying to downplay it like it was just a  
8 formality and not some horrible thing.

9 Q. And so, this is relating to when Deloitte & Touche at the  
10 very end found what they considered to be an irregularity?

11 A. Well, it was supposed to be COLB wet funds, is what we were  
12 told. And we didn't think there was anything wrong with COLB wet  
13 funds.

14 Q. I am sorry, who told you COLB wet funds?

15 A. Lee did originally.

16 Q. Okay. But basically Deloitte is there auditing. And you  
17 talk about Jeff Cavender who is the lawyer for Taylor Bean &  
18 Whitaker, correct?

19 A. Yes, Jeff Cavender contacted David Byrne. And David Byrne  
20 contacted me. And they wanted to talk to Rodney specifically  
21 because of a comment that Rodney made to somebody at Taylor Bean.

22 Q. A comment that he made to somebody at Taylor Bean & Whitaker  
23 is what started this?

24 A. That's what I was told, yes.

25 Q. Okay.

Kissick - Cross

1019

1 A. Started them wanting to talk to him.

2 Q. Okay. And who is David Byrne?

3 A. He was Colonial Bank's general counsel, in-house.

4 Q. So, this is basically again lawyers who are being involved in  
5 reviewing what's going on with Deloitte & Touche and the audit,  
6 correct?

7 A. Yes.

8 Q. And Mr. Cavender, who is the general counsel, states that  
9 it's ridiculous and he specifically mentioned wet funds, correct?

10 A. Yes.

11 Q. And you say, this is you talking, that they are freaking out  
12 about nothing, correct?

13 A. Well, we thought COLB was fine and in perfect shape.

14 Q. But you are saying they are freaking out about nothing,  
15 that's your statement, correct?

16 A. Yes.

17 Q. And so, you didn't think anything was wrong, correct?

18 A. Not about COLB, no.

19 Q. And then let's go to Defendant's Exhibit 210.

20 MR. STOKES: No objection, Your Honor.

21 THE COURT: All right, it's in.

22 (Defendant's Exh. No. 210 was received in evidence)

23 BY MS. KARINSHAK: (Continuing)

24 Q. Now, this e-mail, looking at the top of the e-mail is talking  
25 about the fact that the bank hired Ernst & Young in May to do a

Kissick - Cross

1020

1 complete forensic review of all FF accounts and transactions.

2 What is an FF account?

3 A. I don't know. I forget. Fed funds. I don't know.

4 Q. Just so we are clear for the record, I am looking at the  
5 e-mail from you to Lee B. Farkas on July 22, 2009.

6 Do you see that?

7 A. Yes, and I just forgot what the term is. So, sorry.

8 Q. And could you read, we just said here that it says FYI,  
9 because of SIG TARP. What does that mean?

10 A. Because of the subpoena that we got.

11 Q. Okay. You got a subpoena from SIG TARP?

12 A. Yes.

13 Q. And which you probably shouldn't know.

14 A. But he already did too.

15 Q. I am sorry?

16 A. He knew as well because they got one too.

17 Q. Okay. So, you are telling him that you got subpoenaed by SIG  
18 TARP, you are giving him a heads-up then, correct?

19 A. No, no, no. I was actually telling him that we hired E&Y.  
20 He knew we had SIG TARP, he had SIG TARP, it was mutually  
21 discussed between Kamal, Sumeet, everybody else. This is about  
22 what he should know is that we hired E&Y previously.

23 Q. So, you are telling him even though he shouldn't know that  
24 you hired Ernst & Young?

25 A. I am saying he probably shouldn't know, yeah.

Kissick - Cross

1021

1 Q. Okay. But you all chose to hire the, the bank hire, that  
2 would be Colonial Bank?

3 A. Right.

4 Q. Hired Ernst & Young in May to do a complete review of the FF  
5 accounts and transactions. You for two years and everybody else  
6 for one year. Found nothing. Correct?

7 A. Right.

8 Q. And then you opine that I think the OCC whispered in  
9 Deloitte's ear to try and screw us all.

10 A. That was the gossip that was going around the bank, yes.

11 Q. Okay. Because Ernst & Young didn't find anything, correct?

12 A. No.

13 Q. And then you get a response back, maybe? At the top, the top  
14 e-mail?

15 A. Yeah.

16 Q. Is that-- Who is that a response from?

17 A. Lee.

18 Q. Defense Exhibit 206, please. I would like to turn to some of  
19 the facilities we have been talking about and their individual  
20 financial status just for context of where we're going.

21 MR. STOKES: No objection, Your Honor.

22 THE COURT: All right, it's in.

23 (Defendant's Exh. No. 206 was received in evidence.

24 BY MS. KARINSHAK: (Continuing)

25 Q. Do you have Defendant's Exhibit 206, Ms. Kissick?

Kissick - Cross

1022

1 A. Yes.

2 Q. I would like you to look at this e-mail chain from the bottom  
3 half where it appears to be from you to Brent Hicks, Kamal Hosein,  
4 and you have copied Chris Best, David Rogers and Sarah Moore?

5 A. It is actually from Brent to us.

6 Q. That's at the bottom. I was actually skipping above that.  
7 But you are correct.

8 A. Okay.

9 Q. I wanted to highlight the response that you gave to Mr. Hicks  
10 and Mr. Hosein, do you see that one?

11 A. Yes.

12 Q. Friday, April 10, 2009 at 5:49 p.m.

13 A. Yes.

14 Q. And what is this regarding?

15 A. The overline.

16 Q. And it says, regarding TBW transactions after the capital  
17 injection, correct?

18 A. Yes.

19 Q. What do you say to Brent there?

20 A. Brent, we also have the overline, which is very much  
21 overcollateralized. Is that what you were referencing.

22 Q. Doesn't this e-mail show the overline was over  
23 overcollateralized in April of 2009?

24 A. Well, it's been collateralized since 2002.

25 Q. But in this instance you are talking about it is very much



Kissick - Cross

1023

1 collateralized, correct?

2 A. In relation to what is outstanding actually on the overline,  
3 yes.

4 Q. So, it is overcollateralized, and that would mean that it  
5 would be able to be used for another facility, correct, because  
6 you have got extra collateralization there?

7 A. Yes.

8 Q. And that's important because of the cross-collateralization  
9 you just told the jury about. When you have extra collateral on  
10 one line, it could be valid collateral to be used on another  
11 facility, correct?

12 A. Yes.

13 Q. And that's why you have cross-collateralization in your  
14 governing documents so that you can use this collateral as  
15 necessary, correct?

16 A. Well, yes, that's why it was set up that way, but it was set  
17 up that way because we were put in a situation-- Nobody else had  
18 an overline in the whole bank, only Taylor Bean. And I started it  
19 2002 to protect the bank because of the situation that occurred.

20 And so, it was overcollateralized. And no matter what,  
21 it still wasn't in the right bucket or whatever.

22 So, we did have, we did have extra collateral and we did  
23 have all of this, but it wasn't on AOT. It was all in the  
24 overline.

25 Q. But you have cross-collateralization such that it can be used

Kissick - Cross

1024

1 for the other buckets, correct?

2 A. Yes.

3 Q. So, it could be used for the other facilities, correct?

4 A. Yes.

5 Q. Okay. And that's why you set it up that way,  
6 cross-collateralization to protect the bank and all the different  
7 facilities that you are operating, correct?

8 A. Yes.

9 Q. Okay, let's go to Defendant's 211, please.

10 THE COURT: Any objection?

11 MR. STOKES: No objection, Your Honor.

12 THE COURT: Okay, it's in.

13 (Defendant's Exh. No. 211 was received in evidence.

14 BY MS. KARINSHAK: (Continuing)

15 Q. All right. Would you please read the start of that e-mail  
16 chain on Defendant's Exhibit 211.

17 A. I called Teresa and reminded her that we do not track loan  
18 level on AOT and COLB, and if that's what your official records  
19 show as 3/31, so be it. It changes all of the time. However for  
20 6/30 there are significant assets that you've repurchased with  
21 cash from Freddie and Ginnie, which instead of being slotted,  
22 listed on overline at zero, need to be slotted to AOT.

23 Q. I am sorry, who is this e-mail from?

24 A. It was from me to Lee.

25 Q. And what is the date?

Kissick - Cross

1025

1 A. July 26.

2 Q. Of 2009, correct?

3 A. Yes.

4 Q. And here you are telling Mr. Farkas that you called Teresa.  
5 Who is Teresa?

6 A. She is operations supervisor over at Taylor Bean's  
7 relationship.

8 Q. Okay. And what is her name?

9 A. Teresa Kelly.

10 Q. And you called her and reminded her, we do not track loan  
11 level on AOT and COLB, correct?

12 A. Well, we don't track loan level on AOT. So, I don't know why  
13 I put the COLB in.

14 Q. But you listed COLB in this e-mail?

15 A. Yes, and I don't know why.

16 Q. Okay. And if that's what your official records show as 3/31,  
17 so be it.

18 What are you referring to as the official records?

19 A. Whatever he was saying was their total of loans. And I think  
20 I was more focussed on getting the loans that were on the overline  
21 into the right trades in AOT.

22 Q. And you said it changes all the time. What do you mean by  
23 that, it changes all the time?

24 A. Well, they are COLB loans. I mean, they are new loans, new  
25 production. And the dollar, the loan data changes all the time.

Kissick - Cross

1026

1 Q. The loan what?

2 A. The loans change all the time.

3 Q. Because they are moving through the different facilities,  
4 correct?

5 A. Yeah, they get paid off.

6 Q. I am sorry?

7 A. The COLB loans get paid off.

8 Q. Okay. So, as they get paid off, then it makes room for  
9 another loan?

10 A. Right.

11 Q. To come to that bucket?

12 A. Right.

13 Q. Okay. However, for 6/30 there are significant assets that  
14 you've repurchased with cash from Freddie and Ginnie which,  
15 instead of being listed on overline at zero.

16 What does that mean, being listed on overline at zero.

17 A. We are always put the loans on overline for reporting  
18 purposes. So, we would hope that they would see them and put them  
19 in trades and get them out and sell them.

20 But because we were having our FDIC exam, I wanted them  
21 to be, I wanted the hole to be fixed on AOT. And I wanted them to  
22 be done the right way.

23 Q. You said they are listed at zero. Do they have no value?

24 A. No, no, we had no money against them on the overline. They  
25 just were listed.

Kissick - Cross

1027

1 Q. So, those are valid loans that are listed on the overline  
2 that need to go over to AOT, is that what you're saying?

3 A. I wanted them to move over to AOT. But they weren't in  
4 trades or anything. That was just to fill the hole.

5 Q. But what you are saying is they are on the overline at zero,  
6 but we can move them over to AOT?

7 A. That's what I wanted to do, yes.

8 Q. And you say here you have repurchased them with cash from  
9 Freddie and Ginnie. And so now they have a value and they could  
10 be moved into a different bucket, correct?

11 A. Correct.

12 Q. So even though it says zero, that doesn't mean it doesn't  
13 have a value?

14 A. Correct.

15 Q. Now, let's move to Defendant's Exhibit 209.

16 MR. STOKES: No objection, Your Honor.

17 THE COURT: All right, it's in.

18 (Defendant's Exh. No. 209 was received in evidence)

19 BY MS. KARINSHAK: (Continuing)

20 Q. And we will just leave that in the record talking about  
21 Defendant's Exhibit 20-- One moment please, Judge.

22 Okay, we are going to-- Now, looking at Defendant's  
23 Exhibit 209, this is the day of the raid, correct, August 3, 2009,  
24 that's the day of the FBI raid?

25 A. Yes.

Kissick - Cross

1028

1 Q. And for years you had been moving collateral between these  
2 different facilities that we have talked about, correct?

3 A. I didn't hear you. I am sorry.

4 Q. Would it fair to say that for years you had been moving  
5 collateral between these different facilities, the different  
6 buckets, correct?

7 A. No, we didn't move it unless we had direction from Taylor  
8 Bean from going from COLB to AOT.

9 Q. But within the operating documents and agreements that you  
10 are operating under, you were moving collateral between the  
11 different facilities, correct?

12 A. As far as from COLB to AOT?

13 Q. I'm talking about looking at all the facilities as a whole.

14 A. If they were, if we were requested to, we would, but we  
15 wouldn't just move them to move them. If they aged out, we would  
16 move them into the right bucket, but we didn't just move them to  
17 move them.

18 Q. And looking at this e-mail, wouldn't it fair to say that some  
19 of the loans were being moved and the collateral was being moved  
20 because Mr. Hosein wanted facilities to look a certain way,  
21 correct? You had talked about that in your testimony.

22 A. Of this particular one?

23 Q. I'm just talking about in general.

24 A. In general we were trying to get our balances down and all  
25 the trades to look good for the FDIC, yes.

Kissick - Cross

1029

1 Q. And. Mr. Hosein, your boss, had wanted these facilities to  
2 look a certain way, correct?

3 A. Yes.

4 Q. And you did this for Mr. Hosein because you believed  
5 everything was fully collateralized and cross-collateralized and  
6 had all those protections we have talked about already, correct?

7 A. Well, this was-- I knew about the hole in AOT and I didn't  
8 want the hole to be discovered. And so that was my, that was the  
9 real thing I was trying to look for, which I said earlier.

10 Q. Could you clarify that, please.

11 A. This e-mail or this PIN was trying to get the loans to get  
12 everything fixed. Because the loans on the overline were on the  
13 overline and they weren't on AOT, and I didn't want the hole to be  
14 discovered on AOT.

15 Q. But you had, Mr. Hosein knew or had complained about private  
16 label versus agency labels, correct?

17 A. Yes.

18 Q. And you had labeled them a certain way to make him happy,  
19 isn't that right?

20 A. We labeled them as a result of his, I don't know what word to  
21 say-- No, not under his direction, no, that was not done. It was  
22 to have him calm down, but it was not at his direction.

23 Q. To have him calm down because you had mislabeled them on the  
24 lines, correct?

25 A. He did not know that we had mislabeled them.

Kissick - Cross

1030

1 Q. But you had mislabeled them on the lines, correct?

2 A. I personally did not, no, but I knew about them, yes.

3 Q. But you ordered them to be labeled a certain way, private  
4 label versus agency, correct?

5 A. No. We received that information from Taylor Bean.

6 Q. You received information as to how to label them?

7 A. Yes. I have no idea how to label a pool of loans.

8 Q. You have no idea how to label individual loans?

9 A. No. I haven't reviewed collateral in like 25 years. I  
10 wouldn't even know.

11 Q. Is that what you-- You are saying that Mr. Hosein didn't  
12 know about the labels, you did that yourself to make the lines  
13 look better, correct?

14 A. No. I said earlier that we were talking about it. And it  
15 was Lee and Desiree and Teresa and I. And Lee said, let me think  
16 about it for a little bit. And he came back with this idea and we  
17 accepted it because we didn't know what else to do because Kamal's  
18 request was impossible. Nobody was buying private label loans.  
19 There was no way they could be sold.

20 And so, a portion of those loans we changed to agency to  
21 just stop the harassment factor because there was no way they  
22 could be sold, period.

23 Q. Harassment factor from whom?

24 A. OCC to Kamal. Kamal to us.

25 Q. So, you were doing that to satisfy your boss Kamal then,



Kissick - Cross

1031

1 correct?

2 A. Well, no, he didn't say change them to agency.

3 Q. I am not saying that he told you that. I'm saying you want  
4 to appear competent and you are putting those labels on there a  
5 certain way to satisfy him that the line is as it should be,  
6 correct?

7 A. No. We were deceiving him.

8 Q. But you are doing that to make it all look better, correct?

9 A. Yes.

10 Q. And you are the banker in charge of those lines, correct?

11 A. Yes.

12 Q. And you are the head of the Mortgage Warehouse Lending  
13 Division responsible for how those are allocated and slotted,  
14 correct?

15 A. No, I don't slot them or allocate them. I am the one that  
16 receives the information. I have no idea.

17 Q. You have no idea as to what?

18 A. I manage the department. I don't know how to do a mortgage  
19 loan if my life depended on it.

20 Q. But you are responsible for the folks who do that, you are  
21 the boss?

22 A. Our customers are the ones who slot the loans and move them  
23 over. Not my department. My department reviews the collateral,  
24 that's it. We are not mortgage people.

25 Q. But what I am trying to say is in those agencies and

Kissick - Cross

1032

1 facilities when Kamal Hosein, your boss, is looking at them, you  
2 want them to look a certain way to make him happy, right?

3 A. He never looked at the loans either. He looked at the  
4 reports. And we wanted them to show agency to just get the  
5 harassment factor down.

6 And we could not get rid of the loans, there was no way.  
7 So we, we went ahead and agreed to accept them that way even  
8 though we knew they were not right.

9 Q. Well, isn't it true when you first met with the FBI, you told  
10 them that you had made the decision about that labeling?

11 A. I don't think so.

12 Q. Would your memorandum of interview help you refresh your  
13 recollection as to that statement?

14 A. Sure.

15 Q. Would you pass Defendant's Exhibit 235, please. If you could  
16 please look on the second page of that document.

17 Actually, I am sorry, it would be the third page.

18 THE COURT: There is nothing in there.

19 MR. STOKES: The Court's indulgence.

20 THE WITNESS: I have nothing in my exhibit.

21 THE COURT: Well, it's almost 5:30, and this is when  
22 things start to fall apart, when we lose exhibits. So, I think at  
23 this point I am going to let the jury go home. You have had a  
24 long week, ladies and gentlemen.

25 Now, you have tomorrow off, so you can go to work.

Kissick - Cross

1033

1 Those of you who may be government employees, I think you still  
2 have jobs for tomorrow. Again, I haven't heard what has happened.  
3 But as I said, don't worry, the courthouse will be open Monday,  
4 and we will start at 9:30 on Monday.

5 I appreciate again quite seriously how much attention  
6 you have been paying to the case and your promptness, so I  
7 appreciate that.

8 Again, please avoid any media coverage, any discussions  
9 about the case. Do not talk to each other. Don't e-mail each  
10 other about the case. Just go home and have a good restful  
11 weekend. Leave your notes, your notebooks here, we will have them  
12 back to you first thing Monday morning.

13 And I think I will keep the counsel here for a couple of  
14 minutes, but you all are free to go. Have a good weekend, ladies  
15 and gentlemen.

16 NOTE: At this point the jury leaves the courtroom;  
17 whereupon the case continues as follows:

18 JURY OUT

19 Ms. Kissick, you need to be back here at 9:30 Monday  
20 morning. You can go now.

21 NOTE: The witness stood down.

22 THE COURT: Actually, Ms. Kissick, just for the record,  
23 you are not to discuss your testimony with anyone or read anything  
24 about the case. All right.

25 THE WITNESS: Or let anyone read anything to me.

Kissick - Cross

1034

1           MR. STOKES: Judge, before Ms. Kissick leaves, can I  
2 just-- We do need to speak to Ms. Kissick before she leaves  
3 because I believe she has a flight scheduled tonight. And as I  
4 understand it, the government regulations, I don't think that we  
5 can, the Government will fly her back. So, I think we need her to  
6 stay for the weekend.

7           THE COURT: On those logistical things--

8           MR. STOKES: I apologize, so I think we may need to talk  
9 to her to work out those logistics, that's what I was told just  
10 recently. So, she is obviously learning this for the first time.  
11 So, the Government will need to deal with her for that nature.

12           THE COURT: You might want to wait out in the hall and  
13 they will talk to you for a moment or two out there.

14           NOTE: The witness leaves the courtroom.

15           THE COURT: Are there going to be any other logistical  
16 problems, Mr. Stokes, that you are aware of if there is a  
17 shutdown?

18           MR. STOKES: I am sorry, I didn't hear you.

19           THE COURT: Are there going to be any other logistical  
20 problems that you can envision because of the shutdown with your  
21 other witnesses?

22           MR. STOKES: Your Honor, I don't believe so. I have  
23 been told that for the Fraud Section at least that the trial team  
24 will be essential. And so, I will verify and let the Court know  
25 tomorrow if there is going to be any problems with the shutdown,

Kissick - Cross

1035

1 but we believe we are not going to have a problem with the Fraud  
2 Section. And we are handling a significant amount of the travel  
3 arrangements. I can't speak for the U.S. Attorney's Office  
4 though.

5 THE COURT: All right. We have a docket tomorrow  
6 morning. So, you can't leave your papers as they are on the  
7 tables.

8 I can give you space in the corner and working with Mr.  
9 Wood, we can give you space in the witness rooms. We can lock  
10 those, can't we, Mr. Wood? Can we lock the witness rooms?

11 THE MARSHAL: Yes.

12 THE COURT: So, you don't have to cart everything back  
13 to your offices. You may need a few minutes this evening to clean  
14 things up. All right. And that means you may need a little extra  
15 time Monday morning to get everything back in place. All right.

16 MR. STOKES: Yes.

17 THE COURT: Anything else before we recess?

18 MR. STOKES: Your Honor, I would just, I think just from  
19 a timing standpoint, I think we are, you know-- We've really made  
20 a lot of headway here. I think Ms. Karinshak is nearly finished  
21 here. And so, assuming that Ms. Kissick ends early on Monday, I  
22 think we are going to move through a number of witnesses very  
23 quickly next week.

24 THE COURT: I would expect that.

25 MR. STOKES: Yes.

Kissick - Cross

1036

1           THE COURT: I was considering giving you a cutoff.  
2 Because the cross has been so long and it is unpredictable, I am  
3 not quite going to do that. You did move it along today. The  
4 direct case went quite well, so we will not yet give you a  
5 deadline.

6           MR. STOKES: I would even point out, Your Honor, that I  
7 believe the cross has been about one-and-a-half times the direct  
8 at this point. So, we are, the Government is moving this along as  
9 quickly as we can.

10           THE COURT: I am keeping track of that. There is a  
11 great benefit to brevity.

12           I think, Mr. Cummings, you got the award for the  
13 shortest cross, and it was probably the most effective too.

14           In any case, we are going to definitely hold court on  
15 Friday next week. I think I mentioned that earlier, but I am not  
16 yet sure what time we are going to start because I am going  
17 rearrange some docket things Friday morning, but definitely plan  
18 on that. And make sure your witnesses are scheduled for that.

19           MR. STOKES: Yes. And, Your Honor, we may, we will  
20 speak to the defense, but we may be filing a motion. They  
21 provided expert notice, we want the talk to the defense first  
22 about that, but there are a number of issues in there.

23           So, would it make the most sense to put that on the  
24 docket for next Friday.

25           THE COURT: No, no, we will take it up early morning

Kissick - Cross

1037

1 hours some day next week. I don't want to delay things any more  
2 than we absolutely have to. All right.

3 MR. STOKES: And, Your Honor, we also had requested and  
4 the Court had ordered the defense to turn over summary charts by  
5 Tuesday. We have not received anything. I don't know if--

6 THE COURT: Then I assume there are none.

7 MR. STOKES: I assume that's right.

8 MR. KUGLAR: You got everything.

9 MR. STOKES: So, we got-- The expert notice is what we  
10 received then.

11 MR. KUGLAR: Yes.

12 THE COURT: You got the expert notice. I thought you  
13 were complaining about the summary charts.

14 MR. STOKES: Yes, I was asking about the summary charts.  
15 We did not receive any summary charts.

16 MR. KUGLAR: All the charts referenced therein were  
17 attached--

18 THE COURT: All right, you all sort that out. If there  
19 was a ministerial error, no problem. If in fact they don't yet  
20 exist, there is a problem.

21 All right. And if it is a real emergency, we could do  
22 it tomorrow morning on the criminal docket. So, otherwise some  
23 morning next week before trial.

24 MR. STOKES: Yes, Your Honor.

25 THE COURT: We will recess court for the day.

Kissick - Cross

1038

1               NOTE: The April 7. 2011 portion of the case is  
2 concluded.

3 -----  
4  
5  
6  
7

8                               CERTIFICATE OF COURT REPORTERS  
9

10  
11  
12  
13               We certify that the foregoing is a true and  
14 accurate transcription of our stenographic notes.  
15  
16  
17

18                               /s/  
19                               \_\_\_\_\_  
Norman B. Linnell, RMR, FCRR

20  
21                               /s/  
22                               \_\_\_\_\_  
Anneliese J. Thomson, RDR, CRR  
23  
24  
25